

**EXHIBIT  
B**

Case: Tina Moore, et al. v. Brian  
Kaminski, et al.

4:14-CV1443 SNLJ

Transcript of: Brian Kaminski

**Date:** September 22, 2015

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TINA MOORE, Individually and as Personal  
Representative of the ESTATE OF JASON MOORE, DELORES  
MOORE, and RENEE RODGERS, as Next Friend for A.D.R.,  
a Minor,

PLAINTIFFS,

VS.

BRIAN KAMINSKI, et al.,

DEFENDANTS.

DEPOSITION OF  
BRIAN KAMINSKI

SEPTEMBER 22, 2015



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1 THE VIDEOGRAPHER: We're on the record at  
2 9:31. Today is September 22, 2015, and we are at  
3 the law offices of Pitzer Snodgrass at 100 South  
4 Fourth Street in St. Louis, Missouri.

5 This is the deposition of Brian  
6 Kaminski being taken in the cause of Tina Moore,  
7 et al., versus Brian Kaminski, et al., pending in  
8 the United States District Court, for the Eastern  
9 District of Missouri, Eastern Division.

10 My name is Tim Perry, certified legal  
11 video specialist, here with Tracey Aurelio our  
12 certified court reporter. We're with Gore Perry  
13 Reporting and Video at 515 Olive Street in  
14 St. Louis, Missouri.

15 And, Counsel, I would ask you now to  
16 please identify yourselves for the record.

17 MR. FLOYD: Mark Floyd representing the  
18 Plaintiff, Tina Moore.

19 MR. JOHNSON: Todd Johnson representing the  
20 Plaintiff, Delores Moore, and Renee Rodgers.

21 MR. PLUNKERT: Bob Plunkert representing the  
22 defendants.

23 MS. SHAFIAIE: Ida Shafaie representing the  
24 defendants.

25 THE VIDEOGRAPHER: Thank you, all.

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1 Tracey, please swear in the witness.

2 (Witness sworn.)

3 MR. PLUNKERT: I just now remembered this.

4 So before we start, the officer has been out on call  
5 all night. He's been on duty. So he's coming off  
6 of working on the night. And whenever we want to  
7 readdress it, if he gets tired I just kind of want  
8 to raise that now. It may become an issue. It may  
9 not be, but it's something that I want to express on  
10 your behalf.

11 THE WITNESS: I appreciate it.

12 BRIAN KAMINSKI,  
13 of lawful age, having been first duly sworn to  
14 testify the truth, the whole truth, and  
15 nothing but the truth in the case aforesaid,  
16 deposes and says in reply to oral  
17 interrogatories, propounded as follows, to-wit:

18 [EXAMINATION]

19 QUESTIONS BY MR. FLOYD:

20 Q Good morning, Officer.

21 A Good morning.

22 Q My name is Mark Floyd. I'm representing  
23 Jason Moore's widow, Tina. And we've asked you here  
24 today to take your deposition to ask you some  
25 questions regarding the events that took place on

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1 September 17, 2011.

2 Before we get started, I wanted to  
3 cover a couple of preliminary issues. Have you  
4 given a deposition before?

5 A No, I have not.

6 Q You understand that you're under oath today?

7 A Yes, sir.

8 Q And if you have any questions or if you  
9 don't understand any of my questions, will you let  
10 me know so that I can rephrase them in such a way  
11 that you do understand them?

12 A Yes, sir.

13 Q And if you answer my questions, I'll assume  
14 you understood them. Fair enough? And while we're  
15 going through the deposition, if you can answer my  
16 questions verbally. I know that we have a video  
17 here today, but just so there's no question about  
18 whether it was an "huh-uh" or an "uh-huh" or a  
19 gesture, we try to get everybody to answer the  
20 questions verbally so that the answers are clear on  
21 the record.

22 A Okay.

23 Q Can you do that?

24 A Yes, sir.

25 Q If you need to take a break at any time, you



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1 can do that as well. Okay?

2 A Okay.

3 Q Can you state -- can you state your name for  
4 the record.

5 A Brian Kaminski.

6 Q And how old of a gentleman are you?

7 A I'll be 37 next month.

8 Q And can you tell me a little bit about your  
9 education starting with high school?

10 A Graduated Hazelwood Central with a diploma.  
11 After that I went to the police academy at the  
12 Eastern Missouri Police Academy.

13 Q Is that in St. Charles?

14 A Yes, sir.

15 Q What year did you graduate from the police  
16 academy?

17 A I graduated the police academy in 2003.

18 Q In addition to the police academy training,  
19 have you completed any other training, whether it be  
20 something that you do within the police force or  
21 continuing education that you do from -- through  
22 third parties?

23 A We do continuing education, 48 hours minimum  
24 every three years. I am usually in the 48 to 60  
25 hours for the three years.

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1           Q    Has any of that continued training been on  
2   the subject matter of crisis intervention?

3           A    Yes, sir.

4           Q    Can you tell me what you understand crisis  
5   intervention training to be?

6           A    It's to be able to identify mentally ill or  
7   subjects that have some kind of learning disability.

8           Q    Is it to prepare and educate a police  
9   officer in handling and dealing with situations  
10  involving people with mental illness?

11          A    Sounds like a good quote, yes.

12          Q    Does it also train and educate police  
13  officers on how to deal with people that are in  
14  emotional distress?

15          A    Yes, sir.

16          Q    Have you had any of that training?

17          A    Yes, sir.

18          Q    Looking through some of the documents, I saw  
19  that at one point you had taken a course that was 44  
20  hours of crisis intervention training. Do you  
21  remember that?

22          A    Yes, sir.

23          Q    Have you had additional crisis  
24  intervention training in addition to the 44-hour  
25  course?

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1           A    No, sir. I was scheduled to go last year.  
2   And I was injured on the job, and I had to cancel  
3   that education.

4           Q    Prior to September 17, 2011, had you had any  
5   crisis intervention training?

6           A    No, sir.

7           Q    When you were with the police academy, did  
8   you have any crisis intervention training?

9           A    No. There was no training at that time.

10          Q    Did you have any training through any of  
11   your employers on the job in dealing with  
12   emotionally disturbed or mentally ill subjects?

13          A    Not until I took a class with Ferguson in  
14   late 2011.

15          Q    When did you take the course with Ferguson  
16   in 2011?

17          A    I can't remember the exact dates.

18          Q    It was after the incident with Mr. Moore?

19          A    Correct.

20          Q    How many years had you been a police officer  
21   before you had crisis intervention training?

22          A    Nine.

23          Q    Had you had -- have you had any training  
24   regarding the use of a Taser weapon?

25          A    Yes, sir.

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1           Q    When was the first year in your career as a  
2    police officer that you were equipped with a Taser  
3    weapon?

4           A    2004.

5           Q    Before being equipped with a Taser weapon,  
6    were you trained to properly use the Taser weapon?

7           A    Can you repeat that?

8           Q    Did you have any training with the Taser  
9    weapon before you were equipped with it?

10          A    We were trained through Cool Valley before  
11    we were able to carry it.

12          Q    Tell me about that training with Cool  
13    Valley.

14          A    Detective Chris Cassiday went to the  
15    instructor certification class to become an  
16    instructor for Taser. Once he completed his class,  
17    he trained the whole department.

18          Q    What was the -- what were the circumstances  
19    of the training? Was it in a classroom setting or  
20    was it --

21          A    It was at the police station.

22          Q    How long was the training?

23          A    Eight hours.

24          Q    Was he a certified Taser instructor?

25          A    Yes, sir.

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1 Q And you had that training with Cool Valley?

2 A Yes, sir.

3 Q Was that before or in 2004?

4 A It was in 2004.

5 Q In addition to the training at Cool Valley  
6 in 2004 on the use of Taser weapons, have you had  
7 any additional training?

8 A You have to be recertified once a year. So  
9 from 2004 up until 2010, I had the one-year  
10 evaluation -- or recertification class.

11 Q So you would have had, between 2004 and  
12 2011, you would have had six to seven additional --

13 A Correct.

14 Q -- Taser classes?

15 A Correct.

16 Q From year to year, is it essentially the  
17 same information that's -- that you're taught?

18 A Most of the time, yes, it is.

19 Q From let's say, for example, from the 2010  
20 training to the 2011 training, did you learn  
21 anything new?

22 A Well, at 2010 I was given the chance to take  
23 the course of being a certified instructor myself.  
24 So there was a lot more training in that aspect than  
25 the training just to be a user.

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1           Q    So in 2010, you took sufficient Taser  
2   training to become a certified Taser instructor?

3           A    Correct.

4           Q    And did you complete that course?

5           A    Yes, sir.

6           Q    And then when you took another certification  
7   course in 2011, did you learn anything new in the  
8   2011 course, or had you already learned it all in  
9   the 2010 course?

10          A    The 2011 course they put in a couple other  
11   things on where to try and use the probes, you know,  
12   in the front lower mass, keep it away from the  
13   chest. They -- that was always in the course, but  
14   they were recommending more towards not hitting in  
15   the upper chest area.

16          Q    But you already knew that before 2011?

17          A    Correct.

18          Q    Do you know what agitated delirium is?

19          A    I've been trying to read up a little bit  
20   more about it, yes.

21          Q    Do you know what excited delirium is?

22          A    I'm again trying to learn more about it.

23          Q    Have you ever heard the terms "compressing  
24   time and space"?

25          A    No, sir.

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1           Q   While you were with Cool Valley or while you  
2   were with Ferguson Police Department, has there ever  
3   been a protocol where EMS is called to the scene of  
4   an incident or dispatched at the same time or  
5   shortly after police officers are dispatched?

6           A   Yes.

7           Q   What kind of circumstances call for that?

8                   MR. PLUNKERT:   Calls for speculation.   You  
9   may answer.

10          A   Any time that we have any kind of injury, be  
11   it police officer, be it the person we are subduing  
12   or anything like that.

13          Q   (By Mr. Floyd) Do you ever have EMS called  
14   to the scene if you have a serious medical condition  
15   of a mentally ill or disturbed person?

16          A   Yes, sir.

17          Q   Have you ever seen EMS administer sedation  
18   to any of the subjects?

19          A   I have personally not, no.

20          Q   Have you heard of that happening?

21          A   I have heard of that happening, yes.

22          Q   You understand that in many cases it's  
23   appropriate protocol to administer sedation to an  
24   emotionally or mentally ill person that's agitated?

25                   MR. PLUNKERT:   Object to foundation.   You

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1 may answer.

2       **A**   That's not my call. I don't know with EMS  
3 what their policies are.

4       **Q**   (By Mr. Floyd) When you took your Taser  
5 training -- looking through the materials, I did see  
6 some indication there of discussing the use of  
7 Tasers with emotionally distressed individuals. Do  
8 you remember that portion of the training?

9       **A**   Not right off the top of my head, I do not.

10       **Q**   Would you agree that Tasers are a great tool  
11 for a police officer?

12       **A**   I do agree with it, yes.

13       **Q**   Would you also agree that if a police  
14 officer doesn't understand all the risks and dangers  
15 associated with the use of a Taser that it can be a  
16 dangerous tool?

17       **A**   It could be a --

18           MR. PLUNKERT: Calls for speculation. I'm  
19 sorry. Go ahead.

20       **A**   It could be a dangerous tool, yes.

21       **Q**   (By Mr. Floyd) And that Tasers aren't  
22 appropriate in every situation with every subject,  
23 are they?

24       **A**   It's all, you know, depending on the  
25 situation, but, yeah, I would agree with that.



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1 Q Would you agree that Tasers can be lethal?

2 MR. PLUNKERT: I object. Lack of  
3 foundation. You can answer.

4 A I agree that they could be lethal, yes.

5 Q (By Mr. Floyd) That's what your training  
6 teaches you, correct?

7 A Uh-huh.

8 Q Is that a yes?

9 A Yes, sir. Sorry.

10 Q I want to go back to your employment a  
11 little bit. After you graduated from the academy  
12 in, was it 2003 or 2004?

13 A 2003.

14 Q Where did you first obtain employment in the  
15 field as a police officer?

16 A The City of Cool Valley.

17 Q When did you obtain that employment?

18 A I became a reserve officer with them in June  
19 of 2003.

20 Q How long did you work with them?

21 A I left Cool Valley in 2010.

22 Q Did your position with Cool Valley change  
23 from 2003 to 2010?

24 A Yes, sir.

25 Q Can you explain to me how it changed?

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1           **A**    I was originally a reserve officer, which is  
2           just a secondary officer that goes in on his own  
3           time to learn the field.

4                       About six to eight months after that,  
5           I became a part-time officer with the city. Then I  
6           became a full-time officer about six months after  
7           that.

8           **Q**    Would it have been around 2004 or '05 that  
9           you were a full-time officer then?

10          **A**    Late 2004, yeah.

11          **Q**    Did you have any promotions or change in  
12          rank from 2004 to 2010?

13          **A**    No, sir.

14          **Q**    What were your job duties with Cool Valley?

15          **A**    Job duties were patrolling the city, traffic  
16          enforcement, report writing, booking officer, court  
17          bailiff.

18          **Q**    Was there any type of an oath or creed that  
19          you subscribed to after you graduated from the  
20          academy or when you took employment with Cool Valley  
21          as far as your responsibilities as a police officer  
22          to the community?

23          **A**    I don't understand.

24          **Q**    Was there any type of an oath or a creed or,  
25          you know, someone might call it in a business like a

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1 mission statement, you know, to serve the people, to  
2 protect?

3 A To serve and protect.

4 Q During your years with Cool Valley, were you  
5 called out to circumstances where there were  
6 domestic disputes?

7 A Yes, sir.

8 Q How often did you deal with domestic  
9 disputes?

10 A Probably three, five times a week.

11 Q And in some of these situations, did you  
12 deal with people who were under the influence or who  
13 were intoxicated in some form?

14 A Yes, sir.

15 Q Did you deal with people who were  
16 experiencing delirium or a mental illness?

17 A Yes, sir.

18 Q That was something that you encountered on a  
19 fairly frequent basis?

20 A I would say with the mental or -- I would  
21 say probably once a week.

22 Q So you had some experience in dealing with  
23 emotionally disturbed or mentally ill people through  
24 on-the-job experience with Cool Valley?

25 A Correct.

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1           Q    Were there other officers at Cool Valley who  
2    had crisis intervention training that you worked  
3    with?

4           A    Not while I was employed there, no.

5           Q    Did you ever use your Taser on a subject  
6    while you were employed with Cool Valley?

7           A    Yes, sir.

8           Q    Do you know approximately how many times?

9           A    Twice.

10          Q    What were the situations in which you used  
11   the Taser in Cool Valley?

12          A    The first time was a vehicle pursuit where  
13   the subject wrecked his vehicle and started running  
14   on foot. I was in close proximity when I noticed he  
15   was trying to pull something out of his waistband,  
16   and I deployed the Taser at that point.

17          Q    Did the subject have a weapon on him?

18          A    Yes, sir.

19          Q    What weapon did he have?

20          A    It was a sawed-off .22 shotgun.

21          Q    Was there any other instances where you used  
22   a Taser?

23          A    Again, it was a vehicle pursuit where the  
24   subject wrecked his vehicle to the point where he  
25   was having problems getting out of the vehicle. We

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1 assisted getting him out of the vehicle. And as  
2 soon as he was out of the vehicle, he started to  
3 kick and swing punches at us. And I used a Taser to  
4 subdue him also.

5 Q Do you know how many loads you discharged on  
6 the first subject?

7 A One.

8 Q On the second subject?

9 A One.

10 Q Have you ever responded to a call where the  
11 subject was naked when you arrived at the scene?

12 A Not until this, this incident.

13 Q Have you ever heard of a fellow officer  
14 responding to the scene where a subject was naked?

15 A Yes, sir.

16 Q While you were with Cool Valley?

17 A Yes, sir.

18 Q And subsequent to Cool Valley, did you ever  
19 hear of it happening while you were with Ferguson?

20 A No.

21 Q But it did happen at Cool Valley?

22 A Yes, sir.

23 Q And how long were you with Ferguson before  
24 the Moore incident occurred?

25 A Approximately a year and a half.

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1           Q    As an officer with Cool Valley, did you  
2    carry pepper mace or some type of mace or spray?

3           A    I do not. I have a severe reaction to it.

4           Q    Is your reaction to it worse than an average  
5    person's?

6           A    Yes, sir.

7                   MR. PLUNKERT: Objection to lack of  
8    foundation. Go ahead.

9           A    Yes, sir.

10          Q    (By Mr. Floyd) At any time as an officer  
11    have you ever carried any mace?

12          A    I carried it my first six to eight months.

13          Q    When did you -- what is the information  
14    about your reaction to it that you were explaining  
15    to me? When did you discover that?

16          A    We were in a large fight at one of the bars  
17    in the City of Cool Valley. One of the other  
18    officers deployed mace during that. And without  
19    even being a direct shot to me, my eyes swelled up  
20    to the point where I could not see.

21          Q    Is that what the purpose of mace is, to  
22    swell someone's eyes up and to swell up their mucous  
23    membranes?

24                   MR. PLUNKERT: Object. Calls for  
25    speculation. You can answer.

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1           A     I'm not exactly sure what the actual cause  
2     to have mace is. I know it burns and it does cause  
3     a lot of mucous problems, but I've never really seen  
4     anybody swell up the way I do.

5           Q     (By Mr. Floyd) Were you -- were you given  
6     the option to carry pepper mace with the City of  
7     Ferguson?

8           A     Yes, sir.

9           Q     And you decided not to carry it?

10          A     I do not carry it.

11          Q     Have you been examined by a doctor to  
12     determine whether you're at any health risk if you  
13     would have secondary exposure to pepper mace?

14               MR. PLUNKERT: Objection. This invades his  
15     privacy. This isn't an issue in the case, and  
16     there's been no waiver.

17               MR. FLOYD: Are you instructing him not to  
18     answer the question?

19               MR. PLUNKERT: Well, I mean, are you asking  
20     about his medical history?

21               MR. FLOYD: I'm asking about exploring the  
22     basis why he doesn't carry pepper mace.

23               MR. PLUNKERT: When we've been objecting on  
24     to producing materials, it's been on the basis of  
25     privacy. So when it comes to medical records, the

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1 agreement that we had on the previous discovery has  
2 been we're not --

3 MR. FLOYD: I haven't asked for medical  
4 records. I'm still asking him questions about what  
5 he knows and what he's done.

6 MR. PLUNKERT: The physician-patient  
7 conversation, that's --

8 MR. DOWD: A physician can't disclose it,  
9 but he can disclose it. And he's made it relevant  
10 by saying why he doesn't carry mace. That's  
11 changed.

12 MR. PLUNKERT: Not the conversation that  
13 he's had with the physician. I mean, I would  
14 encourage you to work around this so that we don't  
15 have an issue.

16 It's going into his health history.  
17 And the gentleman's health history is not at issue  
18 in this case as a defendant. He's not a plaintiff;  
19 so it's the right to privacy that's being infringed  
20 upon in these questions. And again, based on the  
21 course of conduct of the parties going through  
22 discovery and what we've agreed not to produce, it's  
23 been the medical records that have contained the  
24 personnel files.

25 MR. FLOYD: I disagree with you on your



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1 objection. I believe that these questions are  
2 relevant. If we were seeking medical records or  
3 seeking an authorization to obtain a medical file, I  
4 think your argument might have more merit. But  
5 we're in a discovery deposition more or less, and  
6 he's indicated basis for some not carrying pepper  
7 mace, and I should be able to explore those bases.  
8 If he says there is a medical condition, I should be  
9 able to ask him about it.

10 MR. PLUNKERT: Let's go off the record.

11 THE VIDEOGRAPHER: Off the record at 9:52.

12 (Recess taken.)

13 THE VIDEOGRAPHER: Back on the record at  
14 10:04.

15 MR. PLUNKERT: This is Bob Plunkert. And  
16 we've had the chance to have a break and meet and  
17 confer over a dispute that's arisen. And we've come  
18 to an agreement. The witness is going to be  
19 permitted to testify regarding any conversations he  
20 may have had with any doctor regarding this issue as  
21 to spray.

22 And in exchange, there will be deemed  
23 no waiver of any right to privacy or privilege  
24 otherwise. Do I have that summarized fairly?

25 MR. FLOYD: Yes.

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1 MR. DOWD: Yes. There won't be a waiver due  
2 to his testimony here today.

3 MR. PLUNKERT: Okay. Great. I was worried  
4 about the partial waiver thing. And we've all  
5 agreed on that won't be argued. So subject to that,  
6 he is free to answer the next sets of questions that  
7 Mark has about seeing a doctor and spray.

8 Q (By Mr. Floyd) Getting back to the subject  
9 matter of pepper mace, you indicated that you had  
10 received some secondary spray in the face while the  
11 pepper mace was deployed?

12 A Correct.

13 Q This was with Cool Valley?

14 A Yes, sir.

15 Q Do you know if it was -- there's two types.  
16 There's mace and then there's pepper spray.

17 A This was pepper spray in the fog form.

18 Q Okay. And it caused your eyes to swell?

19 A Yes, sir.

20 Q And have you had any restrictions from a  
21 physician telling you that it's not safe for you to  
22 be anywhere near pepper mace?

23 A No, sir.

24 Q The decision not to carry mace or pepper  
25 mace was your own personal decision?

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1           **A**    Yes, sir.

2           **Q**    And you haven't looked into any medical  
3    evaluation to determine whether or not you're at any  
4    heightened risk to be exposed to pepper mace or  
5    spray as opposed to the general population; is that  
6    fair?

7           **A**    That is fair.

8           **Q**    And you understood that when you made the  
9    decision not to carry mace or pepper mace, that you  
10   essentially eliminated one of your options for  
11   controlling or taking into custody any variety of  
12   subjects?

13          **A**    Correct.

14          **Q**    Have you ever dealt with a hostile subject  
15   while you were employed with Cool Valley?

16          **A**    Yes, sir.

17          **Q**    Have you ever taken a hostile subject into  
18   custody?

19          **A**    Yes, sir.

20          **Q**    Has that occurred often?

21          **A**    I wouldn't say often, no.

22          **Q**    How many times have you had to deal with a  
23   combative or hostile subject?

24          **A**    Throughout my whole career?

25          **Q**    Yes.

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1           A     10, 12 times.

2           Q     Have you had specific training on dealing  
3     with hostile subjects?

4           A     As in what kind of aspect of training?

5           Q     Taking them into custody, physical  
6     confrontation?

7           A     I've been trained for closed combat, you  
8     know, resisting arrest, PPCT type training, you  
9     know, if you are trying to gain compliance of them,  
10    yes.

11          Q     And where did you get that training?

12          A     That training was through the police  
13    academy.

14          Q     And what was the training again?

15          A     PPCT.

16          Q     What's that stand for?

17          A     Pressure point control tactics.

18          Q     Have you found that to be an effective,  
19    helpful training tool?

20          A     On some people, yes. It doesn't always work  
21    on everyone.

22          Q     Have you ever used it when it hasn't worked?

23          A     Yes.

24          Q     What were the circumstances when you used it  
25    and it didn't work?

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1           A     Down at the local bar in Cool Valley, big  
2     fight. I was the only one working. I tried to  
3     control a guy with the -- I don't remember exactly  
4     what it's called, but the pressure point right  
5     behind your jaw, and no bearing whatsoever to him.

6           Q     Was he a large, medium or small subject?

7           A     I would say probably close to my size.

8           Q     And while we're on that subject matter, what  
9     is your height and weight?

10          A     Right now I'm six foot, about 230 pounds.

11          Q     How about back in September of 2011, do you  
12     recollect what your weight was then?

13          A     I was probably six foot, 190 pounds.

14          Q     While you were employed with Cool Valley,  
15     throughout your period of employment were there any  
16     complaints made against you?

17          A     Not that I'm aware of.

18          Q     Let's talk about Ferguson Police Department.  
19     You indicated you were hired in 2010?

20          A     Correct.

21          Q     Do you remember the month you were hired?

22          A     February.

23          Q     Was there any type of a mission statement or  
24     creed that you were expected to follow as a police  
25     officer with Ferguson?

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1           A     Protect and serve the community.

2           Q     And how would you describe your purpose of a  
3     police officer? I mean, in your words what do  
4     you -- what do you -- what do you consider your job?

5           A     I believe it's going out, trying to make  
6     contact with the citizens of the city, traffic  
7     enforcement.

8           Q     Would you agree that being a police officer  
9     isn't just to catch the bad guys?

10          A     Correct.

11          Q     It's oftentimes to help people that are in  
12     need?

13          A     I agree.

14          Q     And I want to talk about some of the  
15     training that you've had with Ferguson. We talked  
16     about some of the training before Ferguson. And we  
17     mentioned it a little bit, but you have had crisis  
18     intervention training now with Ferguson?

19          A     Yes, sir.

20          Q     And you had that after the September 17,  
21     2011, incident with Moore?

22          A     Yes, sir.

23          Q     And how soon after that incident did you  
24     have the crisis intervention training?

25          A     I'm not really sure on how -- I don't

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1 remember exactly what time I had the CIT training.

2 Q But it was in 2011?

3 A I'm pretty sure it was.

4 Q And you've had additional Taser training  
5 while you've been with Ferguson, correct?

6 A Yes, sir.

7 Q You have that every year?

8 A Every year.

9 Q Have you had any training with mace or  
10 pepper spray?

11 A No, sir.

12 Q Have you had any training with a baton?

13 A Yes, sir.

14 Q During your period with Ferguson as a police  
15 officer leading up to September 17, 2011, did you  
16 ever feel unequipped or inadequate from a training  
17 perspective on how to deal with mentally disturbed  
18 or emotionally disturbed subjects?

19 A No, sir.

20 Q You felt like you knew enough to do your job  
21 adequately?

22 A Yes, sir.

23 Q And not to bring any of the subjects into  
24 unnecessary harm?

25 A Correct.

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1           **Q**   If you did feel like you had inadequate  
2   knowledge or training, would you have asked Ferguson  
3   for additional training?

4           **A**   Yes, sir.

5           MR. PLUNKERT:   Calls for speculation.   Go  
6   ahead.

7           **A**   Yes, sir.

8           **Q**   (By Mr. Floyd) I want to talk to you about  
9   the report of the incident in question.   I'll hand  
10   you a copy of it.

11           MR. FLOYD:   You can mark this.   And what  
12   number were we up to?

13           MR. JOHNSON:   Twelve.   This will be 12.

14           MR. FLOYD:   This will be 12.

15                           (Exhibit 12 was marked for  
16                           identification by the court  
17                           reporter.)

18           MR. FLOYD:   Let me let your attorney take a  
19   look.

20           MR. PLUNKERT:   Thank you.   Sure.   It's Bates  
21   stamped 0001 through 19.

22           **Q**   (By Mr. Floyd) Prior to giving our  
23   deposition today, did you review any documents in  
24   preparation for the deposition?

25           **A**   I've gone over the report, yes.



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1 Q Did you speak to anybody other than your  
2 attorney in preparation for the deposition?

3 A No, sir.

4 Q Did you review any documents other than the  
5 police report?

6 A I did look through my Taser training manual,  
7 yes.

8 Q Okay. Any other documents?

9 A No, sir.

10 Q Just two documents, Taser training manual  
11 and the police report?

12 A Yes, sir.

13 Q That's it?

14 A Yeah.

15 Q Talking about this report which is marked as  
16 Exhibit 12, what was the date this report was  
17 completed?

18 A I had my portion of the report completed on  
19 the day of the incident. Other than that, it  
20 appears that the final approval was done on the  
21 30th.

22 Q And final approval -- I want to talk about  
23 the report process. When you complete a report like  
24 this, do you rely on any field notes?

25 A Yes.

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1           Q   And did you have any field notes that you  
2   utilized in preparing this report?

3           A   I do not recall.

4           Q   And when you prepared your initial draft of  
5   the report, did you submit it to someone, one of  
6   your superiors for approval?

7           A   Yes, sir.

8           Q   And who did you submit that to?

9           A   I would most likely have submitted it to  
10   Lieutenant Ballard. I don't remember right offhand.

11          Q   And did Lieutenant Ballard have you make any  
12   changes or additions to the report?

13               MR. PLUNKERT: Lack of foundation. You can  
14   answer.

15          A   A couple spelling grammars -- spelling and  
16   grammar.

17          Q   (By Mr. Floyd) Did you speak to any of the  
18   other officers in between the time of the incident  
19   with Moore and the time that you submitted your  
20   report?

21          A   No, sir.

22          Q   You didn't communicate with Officer White or  
23   Officer Ballard or Officer Bebe during the period  
24   that you were preparing this report?

25          A   No, sir.

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1           Q    Is there a date on the report which would  
2   indicate the time that it was completed?

3           A    I'm not sure. I know I was -- I completed  
4   the report on that day. I don't remember what time  
5   it was. I was sent home after my portion of the  
6   report was completed.

7           Q    And you're still with the City of Ferguson  
8   Police Department?

9           A    Correct.

10          Q    And are you still an officer?

11          A    Yes, sir.

12          Q    Can you explain to me how this report is  
13   broken down? What is on page 1? What does that  
14   contain?

15          A    A face sheet of the incident, where it  
16   occurred at and everybody that was involved.

17          Q    Does it have the time?

18          A    Yes, sir.

19          Q    Time received and time/date received,  
20   time/date dispatched. What's the difference between  
21   received and dispatched?

22          A    The time received is when the call came in  
23   over 911. And the time dispatched is when I was  
24   actually called from dispatch to the area where it  
25   happened.

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1           Q   And does it show what time you arrived at  
2   the scene?

3           A   Yes, sir. Directly across from dispatch  
4   time.

5           Q   6:49?

6           A   6:49.

7           Q   Does it indicate what time Officer White was  
8   dispatched, or would it have been the same time you  
9   were dispatched?

10          A   It was the same time I was dispatched.

11          Q   What were you doing that day with regard to  
12   your shift? Had you just arrived? Had you been  
13   there all night? What were the circumstances?

14          A   I just arrived. We arrive at 6:30 in the  
15   morning. We do our roll call. I was out in the  
16   parking lot getting all my equipment from my  
17   personal vehicle to put into the police vehicle.

18          Q   Was there a new crew coming in at 6:00 a.m.?

19          A   That was my crew coming in.

20          Q   How many officers would have been involved  
21   in that?

22          A   Back then --

23               MR. PLUNKERT: Object to foundation. You  
24   can answer.

25          A   Back then six maybe.

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1           Q    (By Mr. Floyd) What are the rules or  
2   protocol for dispatching? Is there only a certain  
3   number of officers that get dispatched to the scene,  
4   or do all of them get dispatched that are on duty?

5           A    It's all by the scenario of what's going on.

6           Q    How many officers ultimately arrived at that  
7   scene?

8           A    I believe it was myself and three others.

9           Q    That would have been Officer Michael White,  
10   Lieutenant William Ballard, Officer Matthew Bebe.  
11   Am I saying his name right?

12          A    Bebe.

13          Q    Bebe. And what about -- oh, Harry Dilworth,  
14   did he approve the report?

15          A    Correct. He was -- he's a sergeant that was  
16   the final approval.

17          Q    Is there anywhere on this report where it  
18   indicates the time that Officer White arrived at the  
19   scene?

20          A    I don't believe this report would have that,  
21   no.

22          Q    Officer White did prepare a portion of this  
23   report?

24          A    I believe so, yes, sir.

25          Q    Are you familiar with how your dispatch

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1 works? Do you have the understanding of, you know,  
2 if it's a local Ferguson dispatch?

3 A It is.

4 Q St. Louis County? It's a local Ferguson  
5 dispatch?

6 A Yes. Yes, sir.

7 Q And you're dispatched through a radio?

8 A Yes, sir.

9 Q And what are the protocols or what were the  
10 protocols on September 17, 2011, with regard to  
11 dispatch? And I want to go through this a little  
12 bit. When officers get dispatched to a scene, do  
13 officers respond who will be going to the scene?

14 A The way our department works is each officer  
15 is assigned to a sector. The city is broke down  
16 into four sectors. So there's an officer per  
17 sector, then usually one or two cover cars which  
18 roam the city and are used for backups for other  
19 officers in the sectors.

20 Q Does the dispatch have any type of GPS  
21 system that shows where the officers are?

22 A No, sir.

23 Q Okay. And so it's based upon zones or  
24 sectors?

25 A Correct.

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1           Q   And how many officers would have been in a  
2   zone or a sector where this call indicated you  
3   needed to be?

4           A   There would have been one assigned to that  
5   sector.

6           Q   And who was that?

7           A   I don't recall on that day.

8           Q   Okay. So I noticed on page 1 it says the  
9   date and time arrival, 9/17/11. You arrived at  
10   6:49 a.m; is that correct?

11          A   That appears to be, yes.

12          Q   And how did you determine that time?

13          A   That is what is stamped in our CAD system,  
14   the computer assisted dispatch system.

15          Q   And it shows that Officer White arrived at  
16   6:50 a.m; is that correct? That's on page 5 of the  
17   report.

18               MR. DOWD: Do you see that, Officer?

19               THE WITNESS: I see it. I'm just --

20          Q   (By Mr. Floyd) Take a look at it. And then  
21   once you've had an opportunity to look at it, let me  
22   know what your answer is.

23          A   If I'm reading the report, it does appear  
24   that, yes.

25          Q   You appeared at 6:15? And that information,

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1 is that something that is provided to -- or that's  
2 information that he could have obtained from the  
3 CAD?

4 MR. PLUNKERT: Object. Foundation. You can  
5 answer.

6 A Yes.

7 Q (By Mr. Floyd) Is that -- how did you get  
8 your time? How did you -- when you documented the  
9 time that you arrived, where did you get that  
10 information?

11 A Through dispatch. When we get either very  
12 close to the area we're in, like in this for  
13 instance, we weren't exactly sure where Mr. Moore  
14 was. So when I got to the area, I called out on the  
15 radio to dispatch saying I'm in the area.

16 Q When you arrived -- and that's what I want  
17 to go through, the protocol. And that's what I want  
18 to understand.

19 Okay. So you get dispatched. I  
20 understand that, that it goes out on the radio and  
21 that officers respond to that. And when they arrive  
22 at the scene, do they then indicate back to the  
23 dispatch that I'm here at the scene?

24 A Correct.

25 Q And is there a certain verbiage, terminology



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1 that Ferguson used at the time?

2 A When we're -- if we're going to a specific  
3 address, we say we are 1023 to the address. 1023 is  
4 our way or ten code of saying we're on scene. When  
5 there's not a specific address, we say we're 1023 to  
6 the area, which could be a block, a half a block.

7 Q When you're looking for a particular  
8 subject, do you make that -- when you're -- that  
9 indication when you actually see the subject and you  
10 are out of your vehicle?

11 A No.

12 Q Do you make any communication with dispatch  
13 once you exit your vehicle?

14 A Yes.

15 Q And what's the communication to the dispatch  
16 when you exit your vehicle?

17 A I just tell them that I'm out of the vehicle  
18 on foot.

19 Q So when you arrived at 6:49, would that have  
20 been when your vehicle arrived on the scene?

21 A When I arrived to the area, yes.

22 Q Would the CAD indicate when you exited your  
23 vehicle?

24 A Most of the time, probably not.

25 Q But you would have indicated back to

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1 dispatch I've exited my vehicle?

2 A Correct.

3 Q That would have been protocol?

4 A That would be protocol, yes.

5 Q Officer White would be subject to the same  
6 protocol?

7 A Yes.

8 Q When he arrives at the scene, he would  
9 report back to dispatch, arrived at the scene?

10 A Uh-huh.

11 Q That's a yes?

12 A Yes. Sorry.

13 Q And then when he exits his vehicle, he would  
14 indicate, exited my vehicle or what's the  
15 terminology?

16 A At that time --

17 MR. PLUNKERT: Let me object on the  
18 foundation at that stage. You may answer.

19 A At that time with me already being out of  
20 the vehicle, he would probably most likely not  
21 called out that he was exiting his vehicle.

22 Q (By Mr. Floyd) Okay. And then it looks  
23 like -- just take a look here. With regard to  
24 Officer Bebe, does it indicate when he arrived at  
25 the scene? Does that indicate 6:50?

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1 MR. PLUNKERT: What page is that, Mark?

2 MR. FLOYD: That would be page 8.

3 A That does indicate 6:50, yes.

4 Q (By Mr. Floyd) And how about on page 10?

5 Stephanie Wilson?

6 MR. PLUNKERT: Object to form.

7 Q (By Mr. Floyd) Do you see page 10?

8 A Yes, sir.

9 Q Whose -- what's this page telling us? Which  
10 Ferguson officer or employee is it referencing?

11 A That's Detective Wilson. I do not remember  
12 her being on scene.

13 Q According to this report, does it indicate  
14 that Officer Stephanie Wilson arrived at the scene  
15 at 6:50?

16 MR. PLUNKERT: Object to foundation. You  
17 may answer.

18 A The report states that, yes.

19 Q (By Mr. Floyd) Okay. Look at the top, the  
20 top of that page. Is that on a different date? Is  
21 that the next day or?

22 A It appears to be, yes.

23 Q I'm a little confused, though, because --  
24 I'm trying to understand this page. Indicates call  
25 received radio, reporting officer 538 Wilson. Do

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1 you see that?

2 A I see that, yes.

3 Q And then down further under occurrence  
4 details, it indicates 9/17, 6:50 a.m, correct?

5 A Correct.

6 Q Okay. And looking at -- further on this  
7 report, looking to Mr. Moore, does it give the  
8 details of Mr. Moore's age and statistical  
9 information? What page would that be? That would  
10 be page 2?

11 A Yes.

12 Q And the report, does it indicate that  
13 Mr. Moore was five feet seven?

14 A Yes, sir.

15 Q Does that seem accurate to you? Is that  
16 consistent with what you saw?

17 A As far as I can remember, yes.

18 Q Slight build? He weighed 145 pounds  
19 according to this report?

20 A That's what the report says, yes.

21 Q Where would the weight have been obtained?  
22 Would that have been obtained from license  
23 information or department of vehicles?

24 A Yes, sir.

25 Q So tell me -- kind of go through the report.

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1 Tell me what happened. We'll use the report to do  
2 this, but you get the call at 6:46 a.m., correct?

3 A Correct.

4 Q And you arrive at the scene at 6:50,  
5 correct?

6 A Correct.

7 Q Tell me what the call was. What information  
8 was given to you from the dispatch before you even  
9 got to the scene?

10 A We received a call for a black male running  
11 in and out of traffic, beating on cars. And at the  
12 time that he was doing that, he was completely  
13 naked.

14 Q No indication that he had a weapon?

15 A No indication he had a weapon.

16 Q No indication that he had hit anyone?

17 A Correct. It was -- as of right then, it was  
18 hitting on the vehicles.

19 Q And then you appeared at the scene?

20 A Yes, sir.

21 Q And you announced that you were at the  
22 scene, correct?

23 A Correct.

24 Q And then what happened next?

25 A As I was driving, canvassing the area

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1 looking for him, what I did was I called out that I  
2 was in the area when I hit the spot where he was  
3 last seen. Then approximately about two blocks  
4 away, I located Mr. Moore standing at the curb of  
5 Airport Road at Henquin.

6 Q Airport Road and what?

7 A Henquin.

8 Q Henquin?

9 A Yeah.

10 Q And how soon did you spot him after you had  
11 made the announcement to dispatch that you arrived?

12 A I would say within probably a minute, minute  
13 and a half.

14 Q Within how long?

15 A Approximately a minute to a minute and a  
16 half.

17 Q And this is your recollection some four  
18 years later?

19 A Correct.

20 Q Is there anything about your protocol and  
21 the way that you report information to dispatch that  
22 would allow us to pinpoint the time that you spotted  
23 Mr. Moore, with more accuracy?

24 MR. PLUNKERT: Object to form and  
25 foundation. You can answer.

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1           **A**    It's a good possibility. We have changed  
2   dispatch systems since then. I am not sure if  
3   they're able to obtain the information or not.

4           **Q**    (By Mr. Floyd) Would all of your  
5   communications with dispatch have been recorded on  
6   the CAD?

7           **A**    Yes, sir.

8           **Q**    Can you tell me what a CAD is?

9           **A**    It's a computer assisted dispatch.  
10   Basically, the way it works is we are assigned DSN,  
11   department serial numbers. When they log us onto  
12   the shift, they use our DSN and what sector we are  
13   working. So any time they -- I call out on the  
14   radio, they type 586. And whatever I'm doing, they  
15   time stamp it.

16          **Q**    And when you communicate back with dispatch,  
17   does the dispatcher type that information into the  
18   CAD?

19          **A**    That is protocol, yes.

20          **Q**    So as you understand the protocol, would all  
21   of your communications with dispatch have been  
22   entered into the CAD by the dispatch?

23          **A**    By policy, yeah, it should be, yes.

24          **Q**    Okay. All right. Continue on through the  
25   report. You indicated that you saw Mr. Moore

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1 standing at Airport and Henquin? Am I saying that  
2 right?

3 A Henquin, yes.

4 Q Henquin.

5 A Yeah. He came from behind the building and  
6 stood at the curb.

7 Q Where did he stand?

8 A At the curb from -- he walked from a  
9 building. There's a building with a parking lot.  
10 He walked from the building and stood at the curb of  
11 the parking lot at Airport Road.

12 Q Who was the closest person to him?

13 A As in officers?

14 Q Anyone.

15 A Anyone? As far as I can remember, it was  
16 me.

17 Q Okay.

18 A There were vehicles driving down the street.

19 Q What street were they driving down?

20 A Airport Road.

21 Q Is that mostly a residential area there?

22 A There are a few businesses, but mostly  
23 residential, yes.

24 Q Are any of the businesses open, as far as  
25 you know, at 6:50 in the morning?



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1           A    I don't believe so.

2           Q    What was the lighting like? Was it light?  
3   Was it dark?

4           A    It was just becoming daylight.

5           Q    Was the traffic still light at that time?

6           A    No. The traffic was getting heavy.

7           Q    How far from Mr. Moore were you when you  
8   first saw him?

9           A    Kind of hard to predict, you know.

10           MR. PLUNKERT: It calls for speculation.

11           A    I can't really tell you the distance.

12           Q    (By Mr. Floyd) We'll get back to that later.  
13   So and then at some point you have contact with  
14   Mr. Moore. Can you tell me what happens from that  
15   point when you saw him?

16           A    Yeah. I pulled into the parking lot of  
17   where I saw him come out of, kept my vehicle a  
18   distance away from Mr. Moore, exited my vehicle,  
19   advised him to come towards me with his hands in the  
20   air.

21                    When he noticed my presence, that's  
22   when he turned around. And at first he started  
23   walking towards me. As he got closer, he started  
24   swinging his fists in a pinwheel motion and started  
25   walking more in an aggressive manner towards me.

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1 Q And then what happened?

2 A After that, I pulled my department Taser,  
3 pointed it at him and advised him to stop, which he  
4 did not.

5 Second warning I told him -- I  
6 advised him to stop or you're going to be Tased.

7 Q How far were you from your vehicle when all  
8 of this was occurring?

9 A I was approximately probably --

10 MR. PLUNKERT: Calls for speculation. You  
11 may answer.

12 A Probably 10 feet.

13 Q (By Mr. Floyd) Okay. You can continue.  
14 What happened next?

15 A Gave him --

16 Q Go ahead.

17 A Gave him the second command to -- well, the  
18 first command was to come towards me with his hands  
19 up.

20 The second command after he started  
21 walking towards me aggressively with his fists  
22 swinging was to stop and to get on the ground, which  
23 he refused.

24 Third verbal command, I told him to  
25 stop or he was going to be Tased. He refused.

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1 That's when I deployed the Taser.

2 Q Is this information documented in the  
3 report?

4 A I believe so.

5 Q Can you direct me to the area where that  
6 exchange is documented in the report? I'm looking  
7 at page 3 and 4.

8 A Uh-huh.

9 Q I see on page 3 -- and is this your  
10 narrative on page 3?

11 A Yes, sir.

12 Q Where it indicates -- starting at the last  
13 paragraph.

14 A Uh-huh.

15 Q "Jason Moore walked from behind the building  
16 and stood at the curb of Airport Road. I exited my  
17 patrol vehicle and advised Jason to put his hands in  
18 the air and to walk my way. At that time Jason  
19 began to yell and began to walk my way  
20 aggressively." And then, you know, we're into  
21 page 4 then.

22 A Uh-huh. And then I advised Jason to stop  
23 and get on the ground, which he refused to comply  
24 with the commands and started running towards me in  
25 the aggressive manner.

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1           Q    Do you document three verbal warnings in  
2   your report before the first Tase?

3           A    That appears to be, yes.

4           Q    Is that a yes?

5           A    Yes.

6           Q    Indicates that you, "Began to walk backwards  
7   advising Jason to stop and get on the ground. He  
8   refused to comply with the commands and starting  
9   running towards me in an aggressive manner while  
10   swinging his fists in a pinwheel motion towards me.  
11   I again stepped back commanding Jason to get on the  
12   ground. He refused to comply. Unholstered my  
13   department-issued X26 Taser and advised Jason to  
14   stop. He continued to charge. At that point I  
15   deployed one, five-second burst with the Taser." Is  
16   that correct?

17          A    Correct.

18          Q    And what happened after that?

19          A    After the Taser was deployed and had  
20   contact, the probes had contact with the right side  
21   of his body and he locked up and fell to the ground.

22          Q    How close was he to you when you Tased him?

23          A    Again, it's kind of hard to --

24               MR. PLUNKERT: Calls for speculation. You  
25   may answer.

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1           A     I would say between probably 8 to 10 feet.

2           Q     (By Mr. Floyd) Did -- did you know that you  
3     had made contact -- the darts had made contact with  
4     his body?

5           A     Yes, sir.

6           Q     Did you -- does your laser have a -- does  
7     your Taser have a laser on it?

8           A     It does.

9           Q     Where was the laser pointing when you pulled  
10    the trigger?

11          A     When I first pointed -- when I first pulled  
12    the trigger, the laser was pointed on the right side  
13    probably about mid hip.

14          Q     And where did the Tasers enter, the darts  
15    enter?

16               MR. PLUNKERT: Did the camera get what he  
17    was -- okay.

18               THE VIDEOGRAPHER: Yes.

19               MR. PLUNKERT: Sorry.

20          Q     (By Mr. Floyd) Where did the darts enter his  
21    body?

22          A     With looking at the Taser report, one  
23    went -- the bottom one went into the pelvic area.  
24    And the other one went probably about mid chest.

25          Q     And you're 8 feet away from him at this

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1 point?

2 A Roughly.

3 MR. PLUNKERT: Calls for speculation.

4 Q (By Mr. Floyd) Is that what your testimony  
5 was?

6 A Roughly.

7 MR. PLUNKERT: Same.

8 Q (By Mr. Floyd) I'm sorry?

9 A It was roughly.

10 Q So you saw the darts had entered his body?

11 A I did not see the darts enter his body, no.

12 Q But you knew the darts were in his body?

13 A I can tell by the sound of the Taser, yes.

14 Q And is it your testimony -- well, did you  
15 know that one dart was in his chest?

16 A I did not know one was in his chest, no.

17 Q Eight feet away and you can't tell that one  
18 dart's in his chest?

19 MR. PLUNKERT: Object to form.

20 MR. FLOYD: I'm just asking a question.

21 MR. PLUNKERT: Foundation.

22 Q (By Mr. Floyd) From 8 feet away, can you not  
23 tell that the dart is in his chest?

24 MR. PLUNKERT: Same objections.

25 MR. FLOYD: What's the basis of the

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1 objection?

2 MR. PLUNKERT: The form is argumentative.  
3 And on foundation it calls for speculation, which  
4 I'm objecting on you haven't established that he has  
5 knowledge of how far away he was. He said it was  
6 difficult to say, so.

7 Q (By Mr. Floyd) Your best estimate, did you  
8 tell me your best estimate was that you were 8 to  
9 10 feet away from him when you discharged the Taser?

10 MR. PLUNKERT: Same. It's calling for  
11 speculation. You may answer.

12 A Roughly.

13 MR. FLOYD: It's not speculation.

14 MR. DOWD: That's an improper objection.

15 Q (By Mr. Floyd) That's okay. You can go  
16 ahead. You're answering the question though, right?

17 Okay. Now, and from that distance  
18 you gave me from 8 to 10 feet away, are you  
19 testifying that you couldn't see that the dart was  
20 in his chest?

21 A As soon as the darts hit him, I could tell  
22 by the sound of the Taser it made good contact, and  
23 he fell.

24 Q Do you -- what's your vision?

25 A Back then I was corrective pretty close --

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1 pretty close to 20/20.

2 Q And you were wearing contacts or glasses?

3 A I had glasses on that day.

4 Q So with your glasses you were 20/20 vision  
5 back then?

6 A Uh-huh.

7 Q Is that a yes?

8 A Yes, sir.

9 MR. PLUNKERT: Foundation.

10 Q (By Mr. Floyd) Okay. After the darts had  
11 entered his body, did you discharge the Taser? I  
12 mean, did you -- you held, kept the trigger down?

13 A No.

14 Q Okay. Tell me how that Taser works. I  
15 understand that it can be programmed different ways;  
16 is that correct?

17 A When it comes to the programming part, I  
18 don't know.

19 Q Did this Taser operate where you pulled the  
20 trigger once and then it shoots the darts and  
21 discharges the five-second load?

22 A Correct.

23 Q If you hold the trigger down, will it  
24 discharge another load or do you have to release?

25 A It would continue. If you hold the trigger



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1 down, it will continuously shock.

2 Q Okay. And if you let your finger off the  
3 trigger right away, will it just deliver a  
4 five-second load?

5 A Correct, within the first five seconds.

6 Q And what did you do in the situation? How  
7 did you handle the trigger?

8 A I released the trigger.

9 Q Immediately after pulling it; is that  
10 correct?

11 A Yes, sir.

12 Q And what did Mr. Moore do?

13 A Mr. Moore fell to the ground. If I remember  
14 right, he fell towards his chest or fell face --  
15 face down.

16 Q Did he land on sidewalk, street, grass?

17 A Parking lot.

18 Q So he landed on asphalt?

19 A Asphalt.

20 Q And then what happened?

21 A After the five seconds was up, he started to  
22 try and pull himself up off the ground, which I  
23 requested him to stay down a few times, and he  
24 refused. And once he got up to his knees, I  
25 administered the second.

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1           Q   And what's a few times? Is that three  
2   times?

3           A   Two to three times.

4           Q   So two to three times once he's -- this is  
5   after of the load had discharged, correct?

6           A   Correct.

7           Q   So after the five-second load two to three  
8   times, he -- let me go through the sequence. After  
9   the five-second load, he tried to get up, correct?

10          A   Correct.

11          Q   And then you gave two to three commands to  
12   stay down?

13          A   It started while the Taser is still in  
14   effect. We're trying to -- while the Taser is still  
15   cycling, you would start giving him verbal commands.

16          Q   Okay. And when did -- tell me about the  
17   commands you gave after the Taser quit cycling.

18          A   I was telling him to stay down, stay down on  
19   the ground.

20          Q   Did you give two warnings after the Taser  
21   quit cycling to stay down?

22          A   If I can remember right, yes.

23          Q   Do you remember what your words were, what  
24   you said to him?

25          A   Stay down on the ground.

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1 Q Is that documented in your report?

2 A It's in there, "I clearly shouted get on the  
3 ground."

4 Q In the report you indicate that, "Once I  
5 noticed Jason was attempting to get back up," and  
6 that would have been after the Taser discharged, I  
7 mean after the load had been delivered?

8 A After the five seconds had --

9 Q And if I understand the report, unless I'm  
10 reading it wrong, it says, "After the five-second  
11 burst, Jason attempted to get back onto his feet.  
12 Once I noticed Jason attempt to get back on his  
13 feet, I clearly shouted get back on the ground." So  
14 would that have been when the warnings were issued  
15 after the load had discharged?

16 A That one, yes.

17 Q Okay.

18 A We give verbal commands while the Taser is  
19 in effect.

20 Q It's your position, though, you gave him two  
21 verbal commands?

22 MR. PLUNKERT: Object to foundation. You  
23 may answer.

24 Q (By Mr. Floyd) Would you have given him a  
25 verbal command to stay on the ground if he was

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1 already on the ground?

2 MR. PLUNKERT: Calls for speculation. You  
3 may answer.

4 A Yes.

5 Q (By Mr. Floyd) What happened after that,  
6 after he started to get back up and you gave him the  
7 two commands and he -- what happened after that?

8 MR. PLUNKERT: Object to the form.

9 A He was -- he was up almost on his knees  
10 trying to get up with -- and not doing the verbal  
11 commands. I then administered a second burst of the  
12 Taser.

13 Q (By Mr. Floyd) How long did it take him to  
14 get from the position on his stomach to where he's  
15 almost up on his knees?

16 A Within seconds.

17 MR. PLUNKERT: Foundation. I'm sorry.  
18 Foundation.

19 THE WITNESS: I'm sorry.

20 MR. PLUNKERT: Go ahead and answer.

21 A Within seconds.

22 Q (By Mr. Floyd) Seconds? Within two or three  
23 seconds?

24 MR. PLUNKERT: Same objection.

25 A I would say probably one to two seconds,

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1 yes.

2 Q (By Mr. Floyd) And then what did do you?

3 A That's when I administered the second burst.

4 Q As he was starting to stand up onto his  
5 knees, were you able to now notice the dart in his  
6 chest?

7 A No. Because he was kind of doggy on his --  
8 dog style on his knees and hands.

9 Q Okay. And so then what'd you do? You  
10 administered another charge?

11 A Yes. That's the second charge.

12 Q And how long was that charge?

13 A Five seconds.

14 Q What happened during that charge? What did  
15 his body do?

16 A His body straightened out, you know, the  
17 muscle mass. The Taser makes your body tighten up.

18 Q Okay. And then -- and I'm going to -- I  
19 just want to kind of get some of the general details  
20 at this point, but then what happened after that?  
21 Did he -- did he comply?

22 A No.

23 Q What did you do then?

24 A After the five-second, the second  
25 five-second burst still giving him the commands to

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1 stay on the ground, he was still attempting to get  
2 up; so I administered the third.

3 Q And when did you -- did you give him a  
4 warning to stay down?

5 A Yeah.

6 Q How many warnings did you give him?

7 A Between the second and third time? I mean,  
8 throughout the whole course, he was getting commands  
9 to stay on the ground throughout the whole time.

10 Q Okay.

11 A While he was being Tased and while it wasn't  
12 in effect.

13 Q And so in between the first and second Tase,  
14 you gave him a couple of warnings. And then in  
15 between the second and third Tase, how many warnings  
16 did you give him?

17 A Approximately probably the same. Two.

18 Q And then you gave him the third Tase?

19 A Correct.

20 Q Where's Officer White at this point?

21 A Officer White was coming across Airport Road  
22 at this point, coming to where I was.

23 Q On foot?

24 A No. In his vehicle.

25 Q And what happened after the third Tase?

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1           A    After the third Tase, Officer White was able  
2   to come over to me and was able to handcuff  
3   Mr. Moore while the Tasing or while the third burst  
4   was being administered.

5           Q    And what happened then? Did he cuff him?

6           A    Yes.

7           Q    And then what did he do?

8           A    What did Jason do or what did Officer White  
9   do?

10          Q    What did you and Officer White do?

11          A    Officer White cuffed him. Officer White and  
12   I had, you know, a couple words asking if I was okay  
13   and stuff like that. Then we checked --

14          Q    Go ahead.

15          A    We checked -- Officer White checked Jason  
16   and, you know, moved his arm saying, hey, you okay?  
17   You okay? That's when we --

18          Q    Is there any --

19               MR. DOWD: Let him finish.

20          Q    (By Mr. Floyd) Go ahead. Yeah, go ahead.

21          A    That's when we realized that he was not  
22   breathing.

23          Q    Is there any portion in the report that  
24   indicates when you noticed that he wasn't breathing  
25   in relation to when he was last Tased and cuffed?

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1           A    I don't think it gives any kind of, like,  
2   time period.

3           Q    Okay. We'll go through it here a minute. I  
4   think there might be.

5           A    Possibly in Officer White's supplement.

6           Q    Let's go to Officer White's. Have you  
7   located it? I'll find it if not.

8           A    Page 6.

9           Q    Okay.

10          A    Officer White wrote that approximately one  
11   minute after being handcuffed.

12          Q    Okay. And during the period that he was  
13   handcuffed, was he laying on his stomach?

14          A    Yes.

15          Q    Okay. And then after approximately one  
16   minute after being handcuffed, noticed that he  
17   wasn't breathing, and then there was some medical  
18   attention delivered?

19          A    Correct.

20          Q    All right. I want to go back to some of the  
21   Taser training. It looked like you had -- you've  
22   indicated that you had some Taser training while you  
23   were with Cool Valley. And then it looks like you  
24   had Taser training with Ferguson; is that correct?

25          A    Uh-huh. Yes, sir.



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1           Q   And Taser training with the Taser training  
2 academy, correct?

3           A   Yes, sir.

4           Q   And every year you had Taser training,  
5 correct?

6           A   Correct.

7           Q   Okay. And have you ever seen that video of  
8 a Longhorn bull being Tased by a Taser?

9           A   Yes, sir.

10          Q   And it's a -- when did you see that video?

11          A   I saw that originally back in 2004.

12          Q   And how big do you think that bull was?

13          A   It was 1,200 pounds.

14          Q   And it's hit with a Taser. Does it knock  
15 the bull off its feet?

16          A   It puts it on its side, yes.

17          Q   I mean, it just basically paralyzes it there  
18 while it's being Tased, correct?

19          A   Correct.

20          Q   And that's one of those Texas Longhorn  
21 bulls, right?

22          A   Correct.

23          Q   An angry bull at that, was it not?

24          A   That I don't remember.

25          Q   It charged the fence. Do you remember that?

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1           A    I don't remember that, no.

2           Q    Okay. How many volts go through the Taser  
3   X26?

4           A    50,000.

5           Q    Is there different settings it has on it?

6           A    No, sir, not for volt wise or anything like  
7   that, no.

8           Q    Is there a stun setting?

9           A    There is a dry stun. The dry stun is used  
10   when you take the cartridges, the Taser cartridge  
11   off and you just apply the actual gun to skin.

12          Q    And you rely on your Taser training when  
13   you're using a Taser, correct?

14          A    Correct.

15          Q    And you did back in 2011; is that correct?

16          A    Correct.

17          Q    50,000 volts, is that what you said?

18          A    Yeah.

19          Q    And do you have an understanding of how the  
20   Taser actually works? And I don't mean how it  
21   generates the electricity, but what is it about the  
22   Taser that it does to the human body that causes the  
23   person not to resist and to comply and to  
24   incapacitate them?

25               MR. PLUNKERT: Objection. Foundation.

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1 Q (By Mr. Floyd) If you know.

2 MR. PLUNKERT: Subject to that, you can  
3 answer.

4 A What I remember from the training is it's  
5 muscle memory. The Taser puts the electricity  
6 through the barbs, and it shuts down the central  
7 nervous system.

8 Q (By Mr. Floyd) Does it cause -- when the  
9 electricity goes through the body, does it cause the  
10 muscles to contract?

11 A Yes.

12 Q I was looking through your Taser training  
13 materials, and I saw some things in there I wanted  
14 to ask you about. In your -- do you remember in  
15 your Taser training materials where it indicates  
16 that Tasers can cause soft tissue, muscle, tendon  
17 and ligament tears to point a Taser on someone? Did  
18 you know that?

19 A I don't recall that, no.

20 Q It's in your Taser training material. Let  
21 me hand that to you.

22 MR. FLOYD: Mark this as 13. Put 13 on  
23 here.

24 (Exhibit 13 was marked for  
25 identification by the court

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1 reporter.)

2 MR. FLOYD: I think that's Bates stamped  
3 Ferguson 00073.

4 MR. PLUNKERT: Okay. Exhibit 13?

5 MR. FLOYD: Yeah.

6 Q (By Mr. Floyd) Take a look at that. This is  
7 the information that your attorneys provided us that  
8 came from a Taser training class you took?

9 A Correct.

10 Q Do you see in there this is the "Instructor  
11 and User: Warnings, Risks, Releases &  
12 Indemnification Agreement" at the top? Do you see  
13 that?

14 A Yes, sir.

15 Q And if you look down the page where I start  
16 the highlight, it says "Safety Information: CEW  
17 Risks, Avoidance." Do you see that below that  
18 warning?

19 A Yes, sir.

20 Q Do you see where it indicates that "Muscle  
21 contraction or strain-related injury: CEWs in  
22 probe-deployment mode can cause muscle contractions  
23 that may result in injury including bone fractures"?  
24 Do you see that?

25 A I do see that.

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1           Q   Does it go on to say that it can cause tears  
2   of other soft tissue, organ, muscle, tendon,  
3   ligament, cartilage, disc, nerve and bone? Do you  
4   see that?

5           A   I do see that.

6           Q   It can cause fractures to the bone,  
7   including compression fractures to vertebrae?

8           MR. PLUNKERT: Object to the form and  
9   foundation.

10          Q   (By Mr. Floyd) Do you see that in there, in  
11   the report?

12          A   I do see that.

13          Q   Okay. And then did you know that some  
14   individuals are at heightened risk of injury from a  
15   Taser?

16          A   There are some, yes.

17          Q   Would you agree that some of those people  
18   that are at heightened risk could be elderly people?

19          MR. PLUNKERT: Objection to foundation.

20          A   Yes, sir.

21          Q   (By Mr. Floyd) And would you agree that some  
22   of the people at heightened risk of injury from a  
23   Taser could be an individual with a heart condition?

24          MR. PLUNKERT: Objection to foundation.

25          A   Yes, sir.

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1           Q    (By Mr. Floyd) And that a person that is  
2   emotionally distressed?

3                   MR. PLUNKERT:   Same.

4           A    Yes, sir.

5           Q    (By Mr. Floyd) In fact, on the document that  
6   you have before you, which is part of your Taser  
7   training, does it indicate that, "Emotional stress  
8   and physical exertion, both likely in incidents  
9   involving CEW and other uses of force, are reported  
10   as seizure-precipitating factors"? That's down --  
11   it's below the second warning.

12          A    Yes.

13          Q    And then down on the third warning, down at  
14   that bottom of that page in the left column, does it  
15   state, "Cumulative Effects: CEW exposure causes  
16   certain effects, including psychological and  
17   metabolic changes, stress, and pain"? Do you see  
18   that?

19          A    Yes, sir.

20          Q    "In some individuals, the risk of death or  
21   serious injury may increase with cumulative CEW  
22   exposure." Did you see that?

23          A    Yes, sir.

24          Q    And that, "Repeated, prolonged, or  
25   continuous CEW applications may cause or contribute

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1 to cumulative exhaustion, stress, cardiac,  
2 physiological, metabolic, respiratory, and  
3 associated medical risks which could increase the  
4 risk of death or serious injury." Do you see that?

5 A Yes, sir.

6 Q And, "Minimize repeated, continuous, or  
7 simultaneous exposures." Do you see that?

8 A Yes, sir.

9 Q And that, "Physiologic and metabolic  
10 effects: CEW use causes physiologic and/or  
11 metabolic effects that may increase the risk of  
12 death or serious injury." Did you see that?

13 A Yes, sir.

14 Q And then right in the last sentence of that  
15 page, it says, "These effects include changes in  
16 blood chemistry, blood pressure, respiration, heart  
17 rate and rhythm." Do you see that?

18 A Yes.

19 Q And then moving on to the column two on that  
20 same page, it's about six lines down. Does it state  
21 that, "Some individuals may be particularly  
22 susceptible to the effects of CEW use"?

23 A Yes, sir.

24 Q And it says, "These susceptible individuals  
25 include the elderly, those with heart conditions,

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1     asthma, or other pulmonary conditions." Do you see  
2     that?

3           A     I do.

4           Q     And then it states, "And people suffering  
5     from excited delirium, profound agitation." Do you  
6     see that?

7           A     I do.

8           Q     And it goes on to state that, "In a  
9     physiologically or metabolically compromised person,  
10    any physiologic or metabolic change may cause or  
11    contribute to sudden death." Do you see that?

12          A     I do.

13          Q     And do you see down about five lines below  
14    that where it starts, "Minimize the number and  
15    duration"? Do you see that?

16          A     I do.

17          Q     It says, "Minimize the number and duration  
18    of CEW exposures: Most human CEW lab testing has  
19    not exceeded 15 seconds." Have you seen that?

20          A     I do see it.

21          Q     And then below that about another six lines,  
22    it says, "Avoid simultaneous CEW exposures." Do you  
23    see that?

24          A     I do.

25          Q     And then about five lines below that, it



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1 says, "Control and restrain immediately. Begin to  
2 control and" -- "begin control and restraint  
3 procedures, including during CEW exposure," and then  
4 in parentheses it says, "cuffing under power." Do  
5 you see that?

6 A I do.

7 Q Is that telling you that you shouldn't be  
8 exposing people to multiple loads; you should cuff  
9 them while they're under load?

10 MR. PLUNKERT: Object to form and  
11 foundation.

12 Q (By Mr. Floyd) Is that what it's saying in  
13 that? Is that what you understand that to be  
14 saying?

15 MR. PLUNKERT: Same objections. You may  
16 answer.

17 A It does say that, but also in training it  
18 tells you that the person that is using the Taser is  
19 not the one that cuffs the subject.

20 Q (By Mr. Floyd) I got it. But going below  
21 that, there's some more under "Warning." It's about  
22 halfway down the second column. "Cardiac capture,"  
23 do you know what that is?

24 A I do not.

25 Q With all the training that you've had

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1 through Taser, did they cover cardiac capture?

2 A No, they did not.

3 Q I found it here in this training material  
4 that you had. Did you not see it?

5 A I did not.

6 MR. PLUNKERT: Object to the form.

7 Q (By Mr. Floyd) Okay. "Cardiac Capture. CEW  
8 exposure in the chest area near the heart has a low  
9 probability of including extra heart beats (cardiac  
10 capture). In rare circumstances, cardiac capture  
11 could lead to cardiac arrest. When possible, avoid  
12 targeting the frontal chest area near the heart to  
13 reduce the risk of potential serious injury or  
14 death." Do you see that?

15 A I do.

16 Q And it goes on to state that, "Cardiac  
17 capture may be more likely in children and in thin  
18 adults." Do you see that?

19 A I do see that.

20 Q Was Mr. Moore a thin adult?

21 A He was pretty muscular. I mean, he was thin  
22 but he was -- he was tone.

23 Q If the coroner's report had his weight at  
24 about 132 pounds, would you dispute that?

25 A No.

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1           Q    You've been exposed to the training that was  
2    contained in Exhibit Number 13 that I provided you,  
3    correct?

4           A    Correct.

5           Q    I mean, in fact, you had had training for  
6    some six to seven years before this incident with  
7    Mr. Moore took place, correct?

8           A    Correct.

9           Q    And you were a certified Taser instructor at  
10   the time that this incident took place with  
11   Mr. Moore, correct?

12          A    Correct.

13          Q    Do you agree that police officers should  
14   minimize the number of Tases and limit the duration  
15   of Tases?

16               MR. PLUNKERT:   Object to form and  
17   foundation.   You may answer.

18          A    I believe that the officers should use what  
19   is necessary.

20          Q    (By Mr. Floyd) Do you agree that officers  
21   should use the minimum number of Taser loads to  
22   accomplish the lawful objectives?

23               MR. PLUNKERT:   Same objections.   You may  
24   answer.

25          A    I believe each circumstances has a

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1 different --

2 Q (By Mr. Floyd) But do you agree with that?

3 That regardless of what the circumstances are, that  
4 officers should use the minimum number of loads to  
5 accomplish the lawful objectives; no more?

6 A Yeah.

7 Q Do you agree with that?

8 A I agree with that.

9 Q And that in between each Tase that's  
10 delivered, each load that's delivered to a subject,  
11 that the officer should reassess the subject's  
12 behavior, reaction and resistance before initiating  
13 continued exposure. Would you agree with that?

14 A I agree with that.

15 Q In fact, during your Taser training, were  
16 you not asked those questions on some of the testing  
17 and materials that you covered?

18 A I believe we were, yes.

19 Q And that you answered in the affirmative on  
20 those questions that I just asked you. Would you  
21 agree?

22 MR. PLUNKERT: Object to foundation. You  
23 may answer.

24 A I misunderstood what you said.

25 Q (By Mr. Floyd) Well, for instance, in

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1 deploying a CEW, the officer should, and did you  
2 answer, "Use the least number of CEW discharges to  
3 accomplish lawful objectives"?

4 MR. PLUNKERT: Object to foundation. You  
5 may answer.

6 A If that's what I answered on the page, yes.  
7 I don't --

8 Q (By Mr. Floyd) You agree with that though,  
9 right?

10 A Yes.

11 MR. PLUNKERT: Same objections.

12 Q (By Mr. Floyd) I mean, you've known that  
13 since you started using a Taser, didn't you?

14 A Any use of force, yes.

15 Q Okay. And when deploying or using a CEW,  
16 sensitive CEW target areas of the body to be avoided  
17 when practical or possible include the head, throat,  
18 the chest, the breast, the chest area near the  
19 heart, the genitals. You answer "all the above."  
20 You agree with that?

21 A I agree with that.

22 MR. PLUNKERT: Objection to the form and  
23 foundation.

24 Q (By Mr. Floyd) And you've known that for a  
25 long time, correct?

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1           A     Correct.

2           Q     And since you've been using them, correct?

3           A     Uh-huh.

4           Q     Is that yes?

5           A     Yes, sir.

6           Q     And that the preferred target areas for a  
7     CEW deployment are the lower center mass, back  
8     shots, correct?

9           A     Correct.

10          Q     And you knew that since you started using a  
11     Taser, correct?

12          A     Correct.

13          Q     And that as with any use of force, the  
14     longer the CEW exposure, the greater the potential  
15     cumulative, physiological or metabolic effects on  
16     the subject. You know that, right?

17          A     Correct.

18          Q     And you've known that since you started the  
19     Taser, correct?

20          A     Correct.

21          Q     Going all the way back to 2004, correct?

22          A     Yes, sir.

23          Q     And that officers should attempt to minimize  
24     the total or cumulative CEW exposure durations by  
25     cuffing under power, correct?

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1           **A**    Correct.

2           **Q**    And observing the person during breaks in  
3   the CEW exposure, correct?

4           **A**    Correct.

5           **Q**    And using a window of opportunity, correct?

6           **A**    Correct.

7           **Q**    I want to cover just some general rules with  
8   you as a police officer. I want your opinions on  
9   these so that we can establish some basic  
10   understandings of what's appropriate and what's not.

11                   Do you agree that a police officer  
12   should never use more force than necessary to  
13   accomplish lawful objectives?

14           MR. PLUNKERT: Object to form and  
15   foundation. You may answer.

16           **A**    I agree.

17           **Q**    (By Mr. Floyd) And that using more force  
18   than necessary creates an unnecessary risk of injury  
19   or death. Do you agree with that?

20           MR. PLUNKERT: Form and foundation. You can  
21   answer.

22           **A**    I agree.

23           **Q**    (By Mr. Floyd) It's never appropriate to  
24   expose citizens to unnecessary risk of injury or  
25   death. Do you agree?

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1           **A**    I agree.

2           **Q**    Citizens in an agitated state, such as  
3    excited delirium or emotional distress are at  
4    increased risk of injury or death when Tased. Do  
5    you agree with that?

6                   MR. PLUNKERT: Object to form and  
7    foundation. You may answer.

8           **A**    I do not agree with that.

9           **Q**    (By Mr. Floyd) Do you agree that the Taser  
10   training materials indicate that the answer to that  
11   question is the affirmative based upon what we --  
12   what you -- the course that you took?

13                   MR. PLUNKERT: Form and foundation.

14           **A**    I believe in Version 19, which is the new  
15   Taser training version. Yes, it's still a risk,  
16   that it is a serious risk, but they are now saying  
17   that during excited delirium, it is preferred to use  
18   a Taser to try and control the subject as quickly as  
19   possible.

20           **Q**    (By Mr. Floyd) But you do agree with the  
21   statement that citizens in the agitated state,  
22   emotionally distressed or excited delirium are at an  
23   increased risk of injury or death when Tased as  
24   compared to an otherwise healthy, normal, calm  
25   person?



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1 MR. PLUNKERT: Object to form and  
2 foundation.

3 Q (By Mr. Floyd) Do you agree with that?

4 A That I do agree with.

5 Q Based upon your Taser training and the years  
6 that you've been using a Taser?

7 MR. PLUNKERT: Same objections.

8 A Correct.

9 Q (By Mr. Floyd) And you've known that for  
10 years, correct?

11 MR. PLUNKERT: Same objections.

12 Q (By Mr. Floyd) Is that yes?

13 A Yes, sir.

14 Q Since 2004, correct?

15 MR. PLUNKERT: Same objections.

16 A Yes, sir.

17 Q (By Mr. Floyd) Okay. And you agree that  
18 citizens Tased in the chest area are at an increased  
19 risk of injury or death compared to citizens Tased  
20 in the back or lower body? Do you see with that?

21 MR. PLUNKERT: Same objections.

22 A I agree.

23 Q (By Mr. Floyd) And you've known that since  
24 you started using a Taser, correct?

25 MR. PLUNKERT: Same objections.

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1           **A**    Yes, sir.

2           **Q**    (By Mr. Floyd) Citizens that are Tased  
3 repeatedly are at increased risk of injury or death  
4 compared to citizens Tasered one time. Do agree  
5 with that?

6                   MR. PLUNKERT: Same objections.

7           **A**    Through the manual, yes.

8           **Q**    (By Mr. Floyd) And you've known that since  
9 you started using a Taser, correct?

10                   MR. PLUNKERT: Same objections.

11           **A**    Yes.

12           **Q**    (By Mr. Floyd) The greater number -- and you  
13 agree that the greater number of times a person is  
14 Tasered, the greater the risk of injury or death.  
15 Do you agree with that?

16                   MR. PLUNKERT: Same objections.

17           **A**    Yes.

18           **Q**    (By Mr. Floyd) And you've known that since  
19 you started using a Taser in 2004, correct?

20                   MR. PLUNKERT: Same objections.

21           **A**    Yes.

22           **Q**    (By Mr. Floyd) And do you agree that  
23 tasering an emotionally disturbed citizen until they  
24 die is not an acceptable outcome?

25                   MR. PLUNKERT: Object to the form.

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1 Q (By Mr. Floyd) Do you agree with that?

2 A On a situation based, yes.

3 Q Do you agree that tasing an unarmed  
4 emotionally disturbed citizen until they die is not  
5 an acceptable outcome?

6 A On --

7 MR. PLUNKERT: Object to form.

8 A Based --

9 MR. PLUNKERT: And foundation. Go ahead.

10 A Based by a situation, I mean, if it --  
11 unfortunately, sometimes it does happen, but on  
12 situations --

13 Q (By Mr. Floyd) Is that an acceptable outcome  
14 to you?

15 MR. PLUNKERT: Object. Same objections.

16 A I would say no.

17 Q (By Mr. Floyd) Do you agree that an unarmed  
18 citizen should never be Tased unless they pose a  
19 serious threat of injury or death to themselves or  
20 another person?

21 MR. PLUNKERT: Same objections.

22 A Can you read that one again?

23 Q (By Mr. Floyd) An unarmed citizen should  
24 never be Tased unless they pose a serious threat of  
25 injury or death to themselves or another person?

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1 MR. PLUNKERT: Same objections.

2 A I agree.

3 Q (By Mr. Floyd) Do you know what submission  
4 recognition is?

5 A No, sir.

6 Q Do you understand the process by which  
7 someone is being Tased and you have to recognize or  
8 assess whether they have submitted?

9 A Yes, sir.

10 Q Okay. So when I say submission recognition,  
11 what terminology would you use? Would you use  
12 different terminology?

13 A Complying.

14 Q Okay. Would there be some type of  
15 assessment, compliance assessment, or how would you  
16 term it?

17 A Yes.

18 Q So compliance assessment or we'll say  
19 submission recognition, that's when the officer has  
20 to recognize when the subject has submitted,  
21 correct?

22 A Correct.

23 Q When they've complied, correct? You would  
24 agree that submission recognition, the officer is  
25 required to observe, communicate and evaluate a

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1 person before he discharges additional loads? Do  
2 agree with that?

3 MR. PLUNKERT: Object to foundation. You  
4 may answer.

5 A I agree.

6 Q (By Mr. Floyd) And you agree that cuffing  
7 under power should be done when possible to avoid  
8 cumulative Taser loads?

9 MR. PLUNKERT: Object to form and  
10 foundation.

11 A I agree.

12 Q (By Mr. Floyd) Do you agree that multiple  
13 CEWs on a citizen cannot be justified solely on the  
14 grounds that a person fails to comply?

15 MR. PLUNKERT: Same objections.

16 A Can you read that one one more time?

17 Q (By Mr. Floyd) Multiple CEWs loads, Taser  
18 loads on a citizen cannot be justified solely on the  
19 grounds that a person fails to comply?

20 MR. PLUNKERT: Same objections.

21 A That one's tripping me up.

22 Q (By Mr. Floyd) You don't agree with that?

23 A Well --

24 MR. PLUNKERT: Same objections.

25 A I'm trying to get the wording.

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1 Q (By Mr. Floyd) I'll read it one more time.

2 Say it a little differently. Do you agree that

3 Tasing an individual multiple times solely just

4 because the only reason is because they won't comply

5 is not justifiable?

6 MR. PLUNKERT: Same objections.

7 A I do not agree with that.

8 Q (By Mr. Floyd) Okay. Would you be surprised

9 if I told you that the Taser International Training

10 Academy states that multiple CEWs on a citizen

11 cannot be justified solely on the grounds if a

12 person fails to comply?

13 MR. PLUNKERT: Object to the form. You may

14 answer.

15 A I would be surprised, yes.

16 Q (By Mr. Floyd) Do you agree that an officer

17 must conduct a risk assessment to justify each Tase?

18 A I would agree with that, yes.

19 Q I want to go back to the incident again and

20 revisit a couple of things. When you received the

21 dispatch, were you informed that there was a naked

22 man at the scene running around --

23 A Yes.

24 Q -- the neighborhood?

25 A Yes.

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1           Q    You understood that from your training and  
2   experience that he was likely emotionally disturbed?

3           MR. PLUNKERT:  Objection.  Foundation.  
4   Calls for speculation.  You may answer.

5           A    One of two, either emotionally disturbed or  
6   on some kind of narcotic.

7           Q    (By Mr. Floyd) And you knew that -- you  
8   understood the information was that he did not have  
9   a weapon; is that correct?

10          A    Correct.

11          Q    Did you know Jason Moore before this  
12   incident?

13          A    No, sir.

14          Q    When you arrived at the scene and you saw  
15   Jason, did he exhibit signs of emotional distress?

16          A    He showed sign of aggression.

17          Q    Did you see him speaking?

18          A    He was mumbling something, but I could not  
19   understand what he was either mumbling or attempting  
20   to say.

21          Q    Does a normal person in a normal emotional  
22   state in your opinion take their clothes off in  
23   public?

24          MR. PLUNKERT:  Objection.  Foundation.

25          A    No.

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1           Q    (By Mr. Floyd) Does a rational person do  
2   that?

3                   MR. PLUNKERT:   Same objection.

4           A    No.

5           Q    (By Mr. Floyd) Do they pace back and forth  
6   in their yard and talk to Jesus while they're naked  
7   if they're in a normal, rational emotional state in  
8   your opinion?

9                   MR. PLUNKERT:   Same objection.

10          A    In my opinion no, but I have also seen that  
11   with subjects that are on narcotics.

12          Q    (By Mr. Floyd) Did you happen to get the  
13   information about the tox report on Jason after this  
14   incident?

15          A    I've never received it, no.

16          Q    Would you be surprised to know that he was  
17   not under the influence of any narcotics or drugs?

18                   MR. PLUNKERT:   Objection to the form.   You  
19   may answer.

20          A    I would say no.

21          Q    (By Mr. Floyd) And that some people can be  
22   standing naked in their yard talking to Jesus and  
23   pacing back and forth if they're experiencing a  
24   mental illness or emotional distress.   You agree  
25   with that?



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1 MR. PLUNKERT: Calls for speculation.

2 A I agree.

3 Q (By Mr. Floyd) Did you perceive Jason as a  
4 criminal suspect or an emotionally disturbed person  
5 with a serious medical emergency?

6 MR. PLUNKERT: Objection to the form. You  
7 may answer.

8 A I didn't perceive him as anything until he  
9 came aggressively at me.

10 Q (By Mr. Floyd) Knowing that you have an  
11 individual at 6:46 in the morning naked in his front  
12 yard pacing back and forth, did you consider the  
13 possibility that there may be a crisis situation and  
14 that he was a person with a medical emergency?

15 A At that time, no.

16 Q Did you have adequate training as a police  
17 officer at that time to recognize that a person  
18 exhibiting the behavior that Mr. Moore was  
19 exhibiting on September 17, 2011, might be  
20 indicative of mental illness or emotional distress?

21 MR. PLUNKERT: Object to foundation. You  
22 may answer.

23 A I did not have a good amount of training on  
24 that, no.

25 Q (By Mr. Floyd) Since that time after this

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1 incident you've had crisis intervention training?

2 A Correct.

3 Q And the crisis intervention training that  
4 you've had now would lead you to a different  
5 conclusion, would it not?

6 A It's all on --

7 MR. PLUNKERT: Calls for speculation. You  
8 can answer.

9 A It's all on different situations. Every  
10 situation is different. I would not know what I  
11 would --

12 Q (By Mr. Floyd) The crisis intervention  
13 training that you've completed educates you that  
14 there are individuals that suffer from agitated  
15 delirium, excited delirium, chaotic events; is that  
16 correct?

17 MR. PLUNKERT: Same.

18 A Correct.

19 Q (By Mr. Floyd) And emotional distress,  
20 correct?

21 MR. PLUNKERT: Same.

22 Q (By Mr. Floyd) Is that yes?

23 A Yes, sir.

24 Q And that in some of these cases with excited  
25 delirium, the individuals will oftentimes be naked.

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1 You understand that, correct?

2 A Yes, sir.

3 Q And that was part of the crisis intervention  
4 training, correct?

5 A Correct.

6 Q It's a very easy symptom to detect with  
7 excited delirium, is it not?

8 MR. PLUNKERT: Object to form.

9 A Yes, sir.

10 Q (By Mr. Floyd) Someone naked in the front  
11 yard talking nonsense; do you agree?

12 MR. PLUNKERT: Same.

13 A I agree. It's also a very good symptom of  
14 showing of somebody being on PCP or  
15 methamphetamines.

16 Q (By Mr. Floyd) Whatever -- and I won't  
17 discuss, you know, we won't have you give a medical  
18 diagnosis, but assuming that someone can become in a  
19 state of excited delirium or agitated delirium for  
20 many, many different reasons, one of them being drug  
21 withdrawal, drug overdose, schizophrenia, withdrawal  
22 from psychiatric medication, a variety of other  
23 things. Regardless of why they get in the state of  
24 excited delirium, you understand I'm not asking  
25 about those. Okay?

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1           **A**    Okay.

2           **Q**    Did you talk about any of those in your  
3    training?

4           **A**    Of?

5           **Q**    The various ways that the brain can get to  
6    excited delirium? The dopamine, those types of  
7    things, did you discuss that?

8           **A**    Very briefly, yes.

9           **Q**    And that the brain will have an overload of  
10   dopamine and it will cause the person to go into  
11   excited delirium? You understood that?

12          **A**    Chemical imbalance, yes.

13          **Q**    And that there's many different things that  
14   can cause that chemical imbalance, correct?

15          **A**    Correct.

16          **Q**    It's not your job to know that, though, is  
17   it?

18          **A**    No, sir.

19          **Q**    It's just your job after the training to  
20   recognize when someone is in a state of excited  
21   delirium, whether they got there because of their  
22   own wrongdoing or because of something out of their  
23   control, correct?

24          **A**    Correct.

25          **Q**    And you don't know whether they got in that

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1 state because they did something to cause it or  
2 whether it just happened to their body, correct?

3 A Correct.

4 Q And you understand that now that someone  
5 that's in a state of excited delirium, they could be  
6 suffering from a serious medical condition, correct?

7 A Correct.

8 Q And that that person needs help, correct?

9 A Correct.

10 Q And if they are naked and they're not  
11 carrying a weapon, you know they can't shoot you,  
12 correct?

13 A That is true.

14 MR. PLUNKERT: Object to the form and  
15 foundation.

16 Q (By Mr. Floyd) And at the time on  
17 September 17, 2011, you didn't have that crisis  
18 intervention training, did you?

19 A No, sir.

20 Q Did you know that other officers were  
21 dispatched to the scene on September 17, 2011,  
22 besides yourself?

23 A I know the call came out and there were a  
24 few officers that responded.

25 Q Did you know how close those other officers

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1 were to the scene when you arrived?

2 A No, sir.

3 Q Did you consider waiting for backup before  
4 approaching Mr. Moore?

5 A No, sir.

6 Q Why not?

7 A Because he was close to the road, a highly  
8 trafficked flowing area. It was rush hour. It was  
9 rush hour on a Saturday morning, but it was still --  
10 it's still a highly traveled road.

11 Q Why don't you look through these and tell me  
12 if there's one -- we'll start by just letting you  
13 look at this map. And take your time. There's a  
14 couple different views. And see if you can find one  
15 that will help us visualize.

16 MR. FLOYD: Have we already used 13?

17 THE WITNESS: Thirteen has been used, yes.

18 (Exhibits 14, 15 and 16 were  
19 marked for identification by the  
20 court reporter.)

21 Q (By Mr. Floyd) Take a look at 14, 15 and 16,  
22 and take your time and try to find one of those that  
23 will help you describe where the scene unfolded.

24 A The closest one would probably be Number 14.

25 Q Fourteen. Can I see that again?

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1                   You have an extra pen? Well, you've  
2   got a pen. I'm sorry.

3       **A**    Yeah. I have a pen.

4       **Q**    Okay. So looking at Exhibit 14 then, can  
5   you tell me identifying the roads there where -- is  
6   it -- is it Henquin? How do you say that?

7       **A**    Henquin.

8       **Q**    Henquin. Is that Henquin going right down  
9   the middle of the exhibit?

10      **A**    Correct.

11      **Q**    And is that -- where is Airport Road?

12      **A**    Airport Road is the four-lane road at the  
13   bend.

14           MR. PLUNKERT: Do you mind if we take a  
15   quick break?

16           MR. FLOYD: Sure. We can do that.

17           THE VIDEOGRAPHER: Off the record at 11:23.

18                   (Recess taken.)

19           THE VIDEOGRAPHER: Back on the record at  
20   11:37.

21      **Q**    (By Mr. Floyd) Okay. We're back on the  
22   record. And when we took the break, we were  
23   discussing Exhibit 14 which is a Google map of the  
24   area that I believe involved the incident.

25                   Can you take a look at Exhibit 14 and

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1 tell me is that a good Google map of the area where  
2 the incident took place?

3 A Yes, sir, it is.

4 Q And which road did you approach Henquin  
5 from? And can you spell Henquin for the record?

6 A It is H-E-Q-U-I-N [sic].

7 Q Okay. And which way did you -- in which  
8 direction -- and if you don't know, that's okay.  
9 Which direction does Henquin run? Is it north,  
10 south, east, west?

11 A Henquin runs north and south.

12 Q Okay. And looking at Exhibit 14, would the  
13 north side be closer to Airport Road, or would the  
14 north side be at the top of the page?

15 A North side would be at the top of the page.

16 Q Okay. That's the way I have it drawn.  
17 Okay. And so which way did you enter, if you  
18 recall, which way did you enter the area? Did you  
19 first stop on Airport Road? Henquin? Where did you  
20 stop your vehicle?

21 A I came -- I was traveling westbound on  
22 Airport Road, saw Mr. Moore coming out of the back  
23 of the building right there with the white vehicle  
24 in front of it.

25 Q (By Mr. Floyd) Okay.



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1 MR. PLUNKERT: Do you want -- the record is  
2 not going to reflect where. Do you want to hold it  
3 up for the video?

4 A Okay. Mr. Moore was coming from the rear of  
5 this building right here, which is --

6 Q (By Mr. Floyd) Was he -- okay. And so the  
7 rear of the building, is that a -- was that  
8 previously like a dry cleaners or something?

9 A It was a washing machine repair shop.

10 Q Okay. Washing machine repair shop. And  
11 which side of the building, with relation to that  
12 white truck that's on exhibit, was it the side of  
13 the building where the white truck is or the back of  
14 it?

15 A It was the back of it. It was the west side  
16 of the building.

17 Q Okay. The west side of it. And so where  
18 did you pull your vehicle?

19 A I pulled my vehicle basically where the  
20 white van was parked at. A little bit closer to the  
21 west side of the building than where the white van.  
22 I would say probably in the -- and right in front of  
23 the third parking spot.

24 Q What day of the week was this?

25 A On a Saturday.

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1 Q So it's Saturday morning?

2 A Correct.

3 Q And this is predominantly a residential  
4 neighborhood?

5 A Correct.

6 Q And you indicated that when you arrived on  
7 the scene, you're in the parking lot. You were the  
8 closest person to Moore; is that correct?

9 A Correct.

10 Q Did you see any other people in the parking  
11 lot?

12 A No, sir.

13 Q Did you see any other people near him?

14 A No, sir. It was just all vehicles.

15 Q Okay. And were there any other vehicles in  
16 the parking lot?

17 A I don't recall.

18 Q And when you first saw him, your testimony  
19 was you didn't consider him to be a person with a --  
20 I asked you someone with a serious medical emergency  
21 or criminal suspect, and you said an aggressive  
22 person. Was that your answer?

23 A Yes, sir.

24 Q Now, you park your vehicle. Is it on the  
25 south side of the building?

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1           **A**    Yes, sir.

2           **Q**    Just west of where the white truck is?

3           **A**    Correct.

4           **Q**    Can you mark on that, if your pen will on  
5   that exhibit, where you parked your vehicle? Can  
6   you hold that up for the videographer? He may or  
7   may not be able to zoom in. I'm not sure.

8                   MR. PLUNKERT: You marked with an X.

9           **A**    Marked with an X right there.

10                  THE VIDEOGRAPHER: Thank you.

11                               (Exhibit 17 was marked for  
12                               identification by the court  
13                               reporter.)

14           **Q**    (By Mr. Floyd) Let's do this. Let's go to  
15   Exhibit 17. It's the same picture except it's  
16   zoomed, so it might be easier to work with. Do you  
17   agree with me on that?

18           **A**    Yes, sir.

19           **Q**    So let's just pick back up where we were,  
20   and let's go to 17 because it's the same picture.  
21   It's just zoomed. Can you mark on that photograph  
22   with an X where your vehicle parked in the parking  
23   lot?

24           **A**    Parked right there.

25           **Q**    Okay. And point with your pen where

1 Mr. Moore was when you saw him.

2 A Approximately right here.

3 Q Okay. And you would agree that the traffic  
4 on a Saturday morning at 6:45 in the morning, 6:46  
5 in the morning is light?

6 A It was not light that morning, no. Normally  
7 it's light, but that Saturday morning it was not  
8 light.

9 Q So you're saying that on this particular day  
10 there was an anomaly as far as the traffic is  
11 concerned and there was heavier traffic than usual?

12 A Correct.

13 Q And what do you base that information on?  
14 Is that -- and I'm asking you. Well, let me ask it  
15 this way. And are you making that conclusion based  
16 upon your observations?

17 A Yes, sir.

18 Q Anything else you base it on?

19 A Just being in the area on Saturday mornings,  
20 and it was heavier traffic than normal.

21 Q Okay. And was Mr. Moore clothed when you  
22 saw him?

23 A No, sir.

24 Q Did he have any weapons on his person that  
25 you could see?

1           A    No, sir.

2           Q    Were you able to see his hands?

3           A    Yes, sir.

4           Q    Did you shine any lights on him?

5           A    No, sir.

6           Q    When you observed Jason, did you hear him  
7 saying anything?

8           A    Not right away, no. He was -- once I  
9 started commanding him to come towards me, he  
10 started yelling, mumbling. I was unable to tell  
11 what he was saying.

12          Q    How much time elapsed from the time that you  
13 pulled up in your vehicle until you said something  
14 to him?

15          A    I'd say approximately 30, 45 seconds.

16          Q    What did you do during that 30 or 45 seconds  
17 before you said something to him?

18          A    I exited my vehicle and started walking  
19 towards him.

20          Q    Did you radio dispatch?

21          A    When I exited my vehicle, yes.

22          Q    What did you tell them?

23          A    That I have located the subject at the  
24 intersection of Airport and Henquin.

25          Q    Did you do a threat assessment?

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1           A    Yeah. In my head.

2           Q    Well, tell me about that. What was your  
3    threat? What was your precontact, well, precontact  
4    threat assessment? Let's make sure we're on the  
5    same terms here. Do you know what a precontact  
6    threat assessment is?

7           A    Yeah. Before I made any kind of contact  
8    with him.

9           Q    Is that something you're required to do?

10          A    Yes.

11          Q    And what would have been the things that you  
12    went through on your precontact threat assessment?

13          A    Weapons.

14          Q    He had none?

15          A    He had none. Stature to where, you know,  
16    body language, and verbal language.

17          Q    And you knew that other officers had been  
18    dispatched, correct?

19          A    Correct.

20          Q    And he was standing stationary when you  
21    arrived, correct?

22          A    Correct.

23          Q    He wasn't running around, was he?

24          A    Not at this time, no.

25          Q    He didn't start to move around until you

1 spoke to him, correct?

2 A Correct.

3 Q And the information that you had at that  
4 time was there was a naked man in the yards in the  
5 neighborhood walking around, correct?

6 A We received a call for him being in the  
7 middle of Airport Road hitting cars as they drove,  
8 as they passed by.

9 Q And that he was naked was part of it?

10 A And that he was naked, yeah.

11 Q And you made the decision to approach him by  
12 yourself without backup, correct?

13 A Correct.

14 Q You're not carrying any mace at that time,  
15 correct?

16 A Correct.

17 Q And that was a personal decision that you  
18 made not to carry it, correct?

19 A Correct.

20 Q And the weapons available to you at that  
21 time would have been what?

22 A My baton, my Taser and my firearm.

23 Q What's the most lethal of those weapons?

24 A Firearm.

25 Q What's the next lethal?

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1           A    I would say baton.

2                   MR. PLUNKERT:   Foundation.

3           Q    (By Mr. Floyd) It's your position that a  
4 baton is more lethal than a Taser?

5           A    Yes, sir.

6           Q    What's your basis for that?

7                   MR. PLUNKERT:   Same.   Go ahead.

8           A    Stories I've read with police getting to  
9 assaults using their batons, accidentally striking  
10 them in the head, accidentally striking them in the  
11 back of the neck.

12          Q    (By Mr. Floyd) You control where you hit  
13 them with the baton, correct?

14          A    No.

15          Q    You don't control where you hit them with  
16 the baton?

17          A    During the situation, this is no control of  
18 where that baton is being swung, because you swing  
19 it at center of mass.   If he ducks, it's going  
20 straight to his head.

21          Q    It'd have to be a pretty big duck if you  
22 swung at a center mass to get all the way down to  
23 his head; would you agree?

24                   MR. PLUNKERT:   Objection to the form and  
25 foundation.   You may answer.



1 Q (By Mr. Floyd) Do you agree?

2 A I agree.

3 Q Okay. What are the -- what's your protocol  
4 for approaching a subject? Is there a protocol?  
5 Let's start with this. Is there a protocol for you  
6 approaching a subject under the circumstances that  
7 we have, a naked person standing in the street? Is  
8 there a series of, you know, force continuum  
9 contact? What does your training tell you to do at  
10 that time?

11 A My training tells me to remove him away from  
12 any kind of harm to himself.

13 Q Okay. When you first saw him, you indicated  
14 that you saw him as an aggressor. Have you now  
15 changed your evaluation of harm to himself, because  
16 I'm trying to make sure I understand that you didn't  
17 consider him somebody with a serious medical  
18 condition or mental illness?

19 MR. PLUNKERT: Object to the form.

20 Q (By Mr. Floyd) Is that correct?

21 MR. PLUNKERT: You may answer.

22 A That is correct.

23 Q (By Mr. Floyd) Okay. So at what point did  
24 you change your assessment and say I'm worried about  
25 him harming himself?

1           A    When he walked from the back of the building  
2   to the curb.

3           Q    That was the first time that you came to  
4   that conclusion?

5           A    Yes.

6           Q    And did you say anything to calm him down  
7   like I'm here to help you; I'm not going to hurt  
8   you; everything is going to be okay? Anything like  
9   that?

10          A    No. I stated, come over here away from the  
11   curb.

12          Q    You told him to come towards you?

13          A    Yes.

14          Q    And you were walking towards him?

15          A    Correct.

16          Q    So while you're walking towards him, you're  
17   telling him to come towards you, correct?

18          A    Correct.

19          Q    Would you agree that crisis intervention  
20   training that you've subsequently had would suggest  
21   that you try to calm someone in his situation and  
22   say -- and say something to the tune of I'm not  
23   going to hurt you; I'm here to help you; I'm going  
24   to keep my distance? Would you agree with that?

25               MR. PLUNKERT: Form and foundation.

1           A     With the training I've had prior to that,  
2     yes.

3           Q     (By Mr. Floyd) Yes. But that you didn't  
4     have the training at that time, correct?

5           A     Correct.

6           Q     And you didn't do those things, correct?

7           A     Correct.

8           Q     Instead you walked towards him while he was  
9     standing stationary at the time, and you told him to  
10    come towards you, correct?

11          A     Correct.

12          Q     And at some point did you raise your voice  
13    at him?

14          A     I don't recall if I did or not.

15          Q     Were you yelling at him?

16          A     At first, no.

17          Q     When did you start yelling?

18          A     When he started coming at me in an  
19    aggressive manner.

20          Q     How far was he from you when you got out of  
21    your vehicle?

22                MR. PLUNKERT: Calls for speculation.

23          Q     (By Mr. Floyd) What was the distance between  
24    you, in your best estimate, between your vehicle and  
25    Mr. Moore when you first saw him?

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1 MR. PLUNKERT: Calls for speculation. You  
2 can answer.

3 A 25, 30 feet.

4 Q (By Mr. Floyd) And so based upon your  
5 Exhibit 17, can you make an X where, if you haven't  
6 done it, make an X where Mr. Moore was standing?  
7 And then hold that up for the videographer, please.

8 A Right there.

9 THE VIDEOGRAPHER: One second. Thank you.

10 MR. PLUNKERT: Do you want to use different  
11 colors so that you can tell it apart from where he  
12 parked?

13 MR. FLOYD: No. That's okay.

14 MR. PLUNKERT: Okay.

15 Q (By Mr. Floyd) And so now the -- was there  
16 an option for you to go back into your vehicle when  
17 he came towards you?

18 A Yeah. Yes.

19 Q Was there an option for you to go back in  
20 your vehicle and wait for backup?

21 A Yes.

22 Q And at any point did you believe he had a  
23 weapon?

24 A No.

25 Q He wasn't a threat to any other individuals

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1 there, was he?

2 MR. PLUNKERT: Object. Calls for  
3 speculation. You may answer.

4 Q (By Mr. Floyd) From your perception?

5 MR. PLUNKERT: The same.

6 A No individuals were out, no. It was just  
7 vehicles.

8 Q (By Mr. Floyd) The only -- were there any  
9 threats that you perceived?

10 A Towards me?

11 Q Yes.

12 A Yes. When he came towards me.

13 Q Before. Before you approached him?

14 A No. Just to himself. I was afraid he was  
15 going to step off the curb in the traffic again.

16 As you can see on that picture,  
17 Airport Road has a bend in it. And there is also a  
18 hill right there. So when you come over the hill  
19 into the bend, it's kind of hard to see that corner  
20 of the area.

21 Q When you saw him standing -- well, strike  
22 that.

23 Where did you see Moore first in the  
24 parking lot? Was he standing in the very spot that  
25 you saw him when you pulled into the parking lot?

1 Because I think you indicated he didn't move.

2 A He was -- he walked from the back of the  
3 building. As he was walking, that's when I was  
4 pulling into the parking lot.

5 Q How much time elapsed from the time that you  
6 arrived at the scene until Officer White showed up?

7 A That one --

8 MR. PLUNKERT: Calls for speculation. You  
9 may answer.

10 A I am not quite sure.

11 Q (By Mr. Floyd) The report shows him to be  
12 there within a minute of you. Did you realize that?

13 MR. PLUNKERT: Objection. Same objection.

14 A It's probably not to the area, that report  
15 within the minute. It was probably he called out  
16 that he was in the area from the time -- because  
17 like I said, when we're searching for somebody, we  
18 put ourselves in the area. We don't put it exactly  
19 at that address.

20 Q (By Mr. Floyd) If the dispatch records  
21 establish that Officer White was on the scene within  
22 a minute of you being on the scene or a minute and a  
23 half, would you dispute that?

24 A I would probably dispute that, yes.

25 Q And what would be your basis for disputing

1 that?

2       **A**   The time lapse between me showing up and  
3 Officer White getting there.

4       **Q**   Do you agree that Officer White was present  
5 on the scene before the third Tase was administered?

6           MR. PLUNKERT: Objection. Calls for  
7 speculation. You may answer.

8       **A**   If I'm recalling it, he either showed up  
9 during the third Tase or right after the third Tase.

10       **Q**   (By Mr. Floyd) Okay. What do you mean by  
11 showed up? Where did he enter? From this  
12 Exhibit 17, where did Officer White enter the scene?

13       **A**   Henquin is a road that snakes across from  
14 Airport Road. As you can see, there's a parking lot  
15 right here. On this side of the parking lot right  
16 here, Henquin also is on that side of Airport Road.

17       **Q**   Uh-huh.

18       **A**   He came from that side of Henquin and came  
19 over when I called out that I had him at that  
20 location. So he was -- back here is another  
21 subdivision that he was checking.

22       **Q**   Did he pull up in his vehicle?

23       **A**   He did pull up in his vehicle.

24       **Q**   And where did he park? And he came from  
25 northbound on Henquin?

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1           **A**    Yes.

2           **Q**    And did he pull up on Airport Road?

3           **A**    He pulled up into the parking lot also,  
4   probably right about almost in front of the van.

5           **Q**    Okay.  So he parked just east of -- was he  
6   just south of the van, the white van that's on  
7   the --

8           **A**    Yeah.  Yeah.

9           **Q**    And when did you become aware of his  
10   presence?

11          **A**    When I saw his vehicle pull into the parking  
12   lot.

13          **Q**    Okay.  And at that time had you already  
14   had -- deployed your Taser into Mr. Moore?

15          **A**    Yes.

16          **Q**    And where was -- where was -- where did the  
17   Tasing take place?

18          **A**    The first one took place about midway into  
19   the parking lot between where I originally saw  
20   Mr. Moore and my vehicle.

21          **Q**    Can you -- I've got a blue pen.  Maybe you  
22   can just put a circle --

23          **A**    Okay.

24          **Q**    -- a big circle where Mr. Moore was  
25   positioned when he was Tased.



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1           A    The first time he was approximately in  
2   between where he was and where I parked my vehicle.

3           Q    Did that position change at any time  
4   during --

5           A    Yes.

6           Q    It changed?

7           A    Because when he fell. And when he fell, he  
8   fell a little bit closer to my vehicle.

9           Q    Okay.

10          A    When he got back up on his knees and I Tased  
11   him for a second time, he lunged again and was right  
12   about my tire of my patrol vehicle.

13          Q    Okay.

14          A    Then the third time, he ended up about  
15   midway in the doors of my vehicle.

16          Q    Okay. And is any of this documented in your  
17   report that he's -- his position moved from Tase to  
18   Tase?

19          A    That I don't recall. Let me take a look.  
20   No. It does not recall. It does not say.

21          Q    I mean, the report doesn't indicate that he  
22   ever got back up on his feet, does it?

23          A    He never got back to his feet. He was onto  
24   his knees both times when I administered the other  
25   bursts.

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1           Q    Is there anywhere in your report that  
2   indicates that he was on his knees?

3           A    No. It just states that he attempted to get  
4   back up onto his feet.

5           Q    Okay. But you would agree at the end of the  
6   Tasing process, he was closer to the building than  
7   he was Airport Road? Fair statement? Closer to the  
8   building in the parking lot that's identified on  
9   Exhibit 17 than he was Airport Road?

10          A    I agree with that, yes.

11          Q    And did Officer White cuff Mr. Moore while  
12   Mr. Moore was under load, or was it after the load  
13   was administered?

14          A    I believe he started cuffing him while the  
15   burst was going. It was right at the end of the  
16   burst though.

17          Q    And for the record, you didn't make any  
18   attempt to calm Mr. Moore before Tasing him or  
19   approaching him; is that a fair statement?

20          A    Yes.

21          Q    Did you make any attempt to delay contact  
22   with Mr. Moore until backup arrived?

23          A    No.

24          Q    Would you agree if backup had been on the  
25   scene with you, that it would have been possible to

1 perform a cuffing under load on the first Tase?

2 MR. PLUNKERT: Calls for speculation. You  
3 may answer.

4 A If an officer was there with me quicker,  
5 yes.

6 Q (By Mr. Floyd) Have you been trained to cuff  
7 under load?

8 A Yes.

9 Q Has Officer White been trained to cuff under  
10 load?

11 MR. PLUNKERT: Object to foundation. You  
12 may answer.

13 A He should have been, yes.

14 Q (By Mr. Floyd) As far as you know, are all  
15 Ferguson officers trained to cuff under load?

16 A Yes.

17 MR. PLUNKERT: Object to foundation.

18 Q (By Mr. Floyd) Is that a yes?

19 A Yes.

20 Q Would you agree that you didn't utilize any  
21 of the crisis intervention skills that you learned  
22 in the crisis intervention training that you had  
23 subsequent to this? I mean, I'm saying -- I'm not  
24 saying -- I'm saying you didn't know those skills.  
25 So after -- let me state it like this so it's not

1 confusing. Subsequent to this event you took a  
2 crisis intervening course, correct?

3 A Correct.

4 Q And you learned skills and protocols and  
5 techniques for dealing with emotionally disturbed,  
6 excited delirium and mentally ill people, correct?

7 A Correct.

8 Q And the skills that -- had you had this  
9 training course before this incident, there would  
10 have been some things you could have done  
11 differently, correct?

12 MR. PLUNKERT: That calls for speculation.  
13 Lack of foundation. You may answer.

14 A Every situation is different. I don't know.

15 Q (By Mr. Floyd) You could have at least tried  
16 some of the things that you learned in crisis  
17 intervention training, correct?

18 MR. PLUNKERT: Same objections.

19 A It's possible, yes.

20 Q (By Mr. Floyd) What happened to Moore when  
21 the darts entered his body and the load entered his  
22 body?

23 MR. PLUNKERT: Object to form. Go ahead.

24 A He fell down.

25 Q (By Mr. Floyd) Did he fall, drop hard?

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1           A    He fell, yes, face -- or face down, yes.

2           Q    He went face first. Not meaning his head  
3 hit first, but he just collapsed? Did he collapse  
4 forward?

5           A    Yes.

6           Q    And hit the asphalt?

7           A    Correct.

8           Q    And you indicated that during this period,  
9 that you gave commands to Mr. Moore, correct?

10          A    Correct.

11          Q    You gave him commands while he was under  
12 load?

13          A    Correct.

14          Q    And you gave him commands when the load was  
15 finished?

16          A    Correct.

17          Q    And you previously indicated that you gave  
18 him a couple of commands after the load was  
19 finished, correct?

20          A    I would say probably two, yes.

21          Q    Okay. And then he started to get back up,  
22 correct?

23          A    Correct.

24          Q    And although it doesn't state it in the  
25 report, you indicated that he got up to the level of

1 his knees, correct?

2 A Correct.

3 Q And then you Tased him again?

4 A Yes, sir.

5 Q Is that correct?

6 A Yes, sir.

7 Q And what was Jason's body position after the  
8 second Tase? During the second Tase what happened  
9 to him? Did he fall back down?

10 A Yes. His body tightened up, and he went  
11 from the kneeling position to laying back on his  
12 belly.

13 Q Okay. And --

14 MR. PLUNKERT: Did you say belly or belt?

15 THE WITNESS: Belly.

16 MR. PLUNKERT: Okay.

17 Q (By Mr. Floyd) I think I had asked you this  
18 before. I will ask it again. Did you notice the  
19 probe in his chest when Jason was up on his knees?

20 A I did not.

21 Q Where did you -- on the Taser there are  
22 lasers, correct?

23 A Correct.

24 Q How many lasers?

25 A One.

1           Q   And is that for the main dart?  There's one  
2   that's got --

3           A   The top dart goes at an upper angle.  One  
4   I'd say is 8 degrees.  The bottom dart goes down at  
5   a 3-degree angle.

6           Q   Do you know which dart has -- which one's  
7   the ground and which one's the charge?

8           A   That I do not know.

9           Q   What were your exact words to Moore, if you  
10   can recall the commands that you gave him during  
11   right after the first load, after the first Taser  
12   load?  Do you remember?

13          A   I honestly do not remember what the exact  
14   words were.

15          Q   Okay.  And do you understand that a person  
16   under load often cannot hear commands while they're  
17   under load?

18          A   Correct.

19               MR. PLUNKERT:  Lack of foundation.  You may  
20   answer.

21          Q   (By Mr. Floyd) I'm asking him if he knows  
22   that.  Do you know that?

23          A   I do not.

24               MR. PLUNKERT:  That calls for speculation.  
25   You may answer.

1           Q    (By Mr. Floyd) Are you guessing about that  
2   or have you been trained on that?

3           A    That they sometimes do not respond?

4           Q    Yes.

5           A    Yes, I've been trained on that.

6           Q    And does the training also suggest that  
7   commands under load aren't reliable in making a  
8   submission recognition assessment?

9           A    Yes.

10          Q    So what I mean by that is if you give a  
11   command while someone is under load and they don't  
12   comply, it may very well be because they didn't  
13   comprehend the command because they were under load  
14   and couldn't comprehend it. Do you understand that?

15               MR. PLUNKERT: Lack of foundation. Calls  
16   for speculation. You may answer.

17          A    Yes, sir.

18          Q    (By Mr. Floyd) You do understand that. And  
19   what I'm stating is what you understand the training  
20   to dictate, correct?

21          A    Correct.

22               MR. PLUNKERT: Same objections.

23          Q    (By Mr. Floyd) Did they tell you, did any of  
24   the training instructors or anyone tell you why a  
25   command while someone is under load isn't effective



1 or might not be comprehended?

2 A Because a lot of times they cannot  
3 physically do the commands that you're stating.

4 Q Do they sometimes have trouble since it  
5 affects their sensory function and their nervous  
6 system that the subject sometimes can't hear what's  
7 being said while he is being Tased?

8 MR. PLUNKERT: Object to foundation. You  
9 may answer.

10 A I believe so, yes.

11 Q (By Mr. Floyd) And you would agree that in  
12 order to conduct a proper submission recognition  
13 assessment, that you would have to give a command to  
14 a subject after the load had been deployed, correct?

15 A Right.

16 Q Correct?

17 A Correct.

18 Q And did you do that in this situation?

19 A Yes, sir.

20 Q And did you say you gave him two --

21 A Yes, sir.

22 Q -- verbal commands after load was deployed?

23 A Yes, sir.

24 Q And that was after the first load, correct?

25 A Correct.

1           Q    Okay. Then with the second load -- and  
2   again after the first load if you had had pepper  
3   spray, you would have had adequate time during the  
4   first load and after the first load to spray  
5   Mr. Moore with the pepper spray had you had it on  
6   your person, correct?

7           A    Negative.

8           MR. PLUNKERT: Objection. Lack of  
9   foundation. Calls for speculation. You may answer.

10          A    Once a Taser is deployed, you do not mix  
11   Taser and OC spray together.

12          Q    (By Mr. Floyd) Why?

13          A    Because it can ignite the pepper spray with  
14   the electric current.

15          Q    You didn't use a baton?

16          A    No, sir.

17          Q    You wouldn't have had -- there wouldn't have  
18   been much risk of where he was going to be hit with  
19   the baton while he's on the ground, correct?

20          MR. PLUNKERT: Objection. Lacks of  
21   foundation. Calls for speculation. You may answer.

22          A    Correct.

23          Q    (By Mr. Floyd) Not much risk that he's going  
24   to accidentally get hit in the head if you're aiming  
25   for his lower body or extremities, correct?

1 MR. PLUNKERT: Same objections.

2 A Correct.

3 Q (By Mr. Floyd) Before issuing the second  
4 load to Mr. Moore, did you consider using any other  
5 type of less harmful tool to restrain him?

6 A No.

7 Q Any did you consider any less lethal forms  
8 of restraint other than the Taser after the first  
9 load?

10 A No, sir.

11 Q At this time, Jason's only threat to you  
12 would have been his body, correct?

13 A Correct.

14 Q As he was laying on the ground with the  
15 Taser prongs in his body, did you consider him to be  
16 a threat to you?

17 A Yes.

18 Q What did you do when -- what did Jason do  
19 when you delivered the second load?

20 A He was on his knees. When I delivered the  
21 second load, he straighted out, was muscular, you  
22 know.

23 Q Muscular contractions?

24 A Yeah. The contractions straightened him out  
25 and he fell forward again.

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1 Q And these were five-second loads?

2 A Yes, sir.

3 Q 50,000 volts?

4 A Yes, sir.

5 Q And you gave commands for him to comply?

6 A Correct.

7 Q And did you give those commands under load?

8 A Both. Under load and without being on it.

9 Q And we're talking during the second load you  
10 gave him commands under load?

11 A Yes, sir.

12 Q Which we, based upon our conversations, we  
13 understand that those really aren't reliable,  
14 correct?

15 MR. PLUNKERT: Objection. Object to the  
16 form.

17 Q (By Mr. Floyd) Would you agree?

18 A Every person is different.

19 Q But if somebody doesn't respond to a command  
20 while they're under load, you have to recognize that  
21 they may not have even heard or received the load or  
22 the command from their perspective because they were  
23 under load. Do you agree with that?

24 A I agree with that.

25 MR. PLUNKERT: Object. Foundation.

1 MR. FLOYD: Could we just agree that you're  
2 going to object to foundation on all my questions  
3 because --

4 MR. PLUNKERT: No.

5 MR. FLOYD: -- it's kind of interrupting the  
6 answer and question, because now I've got to ask,  
7 because even if this gets editing, you're objecting  
8 in the middle of people talking?

9 MR. PLUNKERT: If you would like for a  
10 foundation objection to be preserved for the record  
11 and stipulate to that, pursuant to the federal rules  
12 I'm willing to entertain that.

13 MR. FLOYD: Okay. Why don't we do that.

14 MR. PLUNKERT: Okay. So form and foundation  
15 or all objections?

16 MR. DOWD: Just form and foundation.

17 MR. FLOYD: Form and foundation.

18 MR. PLUNKERT: Okay. So those are going to  
19 be preserved for this deposition or for all  
20 depositions?

21 MR. FLOYD: For this deposition.

22 MR. PLUNKERT: Okay. Do we have an  
23 agreement from all counsel here that that's going to  
24 be the case?

25 MR. DOWD: Agreed.

1 MR. PLUNKERT: And specifically in order to  
2 preserve any problem I have with any of the  
3 questions on this witness, I don't have to state  
4 anything on the record, and I can raise that at any  
5 point hereafter? Is that agreed?

6 MR. DOWD: As to form and foundation only.

7 MR. PLUNKERT: Yeah. I mean, I guess I'll  
8 object to privileged, but that's about it. Okay.

9 Q (By Mr. Floyd) So getting back to the second  
10 load, you gave a command to comply during the second  
11 load, correct?

12 A During and after.

13 Q After. What commands did you issue to  
14 Mr. Moore during the load?

15 MR. PLUNKERT: Is that -- by the way, Mark,  
16 is that okay?

17 MR. FLOYD: Yes.

18 MR. PLUNKERT: And Todd and Bill, that's  
19 okay?

20 MR. DOWD: Yes. Form and foundation.

21 MR. JOHNSON: Agreed.

22 MR. PLUNKERT: Okay.

23 A I can't recall exactly what I said. It was  
24 most likely to stay on the ground.

25 Q (By Mr. Floyd) And you gave him two commands

1 verbal after the load?

2 A Uh-huh.

3 Q Is that yes?

4 A Yes.

5 Q And then he started to get back up?

6 A Correct.

7 Q And so give me an example of what you would  
8 say to him while he's -- after the load's  
9 administered?

10 A Stay on the ground. Put your hands behind  
11 your back.

12 Q Stay on the ground. Put your hands behind  
13 your back. Stay on the ground. Put your hands  
14 behind your back. Okay. Would that be one command  
15 and you would say that twice?

16 A No. That would be two commands.

17 Q Okay. Stay on the ground. Put your hands  
18 behind your back. Do you say them so that they're  
19 clear to him?

20 A I believe so, yes.

21 Q Okay. And then he starts -- and then after  
22 you give that command, how long do you wait before  
23 you pull the trigger? Do you give him a chance to  
24 respond to it, like whoa, he just told me to stay on  
25 the ground and put my hands behind my back? Do you

1 give him any time to respond to that? Does he get  
2 like a second of leeway in order for him --

3 A I would say a second.

4 Q Okay.

5 A Other than trying to get back up.

6 Q So it might be a couple seconds to deliver  
7 the warning and then a second to see if he's going  
8 to respond to it?

9 A I would say two seconds or so total, yeah.

10 Q No less than two seconds though to deliver  
11 all that, to deliver those warnings and then make  
12 sure to determine whether he's going to follow them?

13 A I would say probably.

14 Q And then you -- where was Mr. Moore's body  
15 position when you delivered the third load?

16 A He was on his left side.

17 Q And how would he have -- when you say left  
18 side, was any part of his stomach touching the  
19 ground or both hips or just his left hip, left  
20 shoulder?

21 A I would say -- I'm trying to remember. Left  
22 shoulder kind of leaning onto his stomach.

23 Q And when you Tased him, was his body again  
24 contracting and vibrating, shaking?

25 A Correct.



1           Q    And during that five-second load, is that  
2   when, around that time is that when Officer White  
3   came up?

4           A    Correct.   Around that time.

5           Q    And cuffed him?

6           A    Correct.

7           Q    And then according to Officer White, it was  
8   approximately a minute, I thought it may have even  
9   been in excess of a minute after he was cuffed  
10   before there was some recognition that Mr. Moore was  
11   suffering from some breathing distress?

12          A    Correct.

13          Q    Now, what does your training tell you to do  
14   after you have cuffed an individual?  Are they -- I  
15   think the report shows that he was laying on his  
16   stomach; is that correct?

17          A    Correct.

18          Q    Face down?

19          A    Correct.

20          Q    And you were there and Officer White was  
21   there, correct?

22          A    Correct.

23          Q    Was there any other officers there?

24          A    At that time I don't believe so.

25          Q    Mr. Moore certainly was alive after the

1 first Tase, correct?

2 A Correct.

3 Q And he was alive after the second Tase,  
4 correct?

5 A Correct.

6 Q And then from what you could see, he was  
7 alive immediately after the third Tase, correct?

8 A Correct.

9 Q And it wasn't until approximately a minute  
10 or so after the third Tase, the final Tase, that he  
11 started to have breathing distress, correct?

12 A Correct.

13 Q And at no time was there any request for EMS  
14 to come to the scene up until the point that he had  
15 breathing distress, correct?

16 A No. As soon as the Tasers are deployed, EMS  
17 is called to respond.

18 Q Okay. And was there ever any attempt to  
19 place Mr. Moore in a seated position after he was  
20 cuffed?

21 A No.

22 Q Was there any effort to place Mr. Moore in a  
23 side position after he was cuffed?

24 A When Officer -- after Officer White cuffed  
25 him, we checked to make sure we were both okay, we

1 rolled him over onto his side to try and get some  
2 information out of him. That's when we know or  
3 notice that he wasn't breathing.

4 Q That would have been the one minute or more  
5 after he was cuffed, correct?

6 A Correct.

7 Q So, and the reason that he would have been  
8 rolled over to his side would have been for you guys  
9 to elicit some information from him, correct?

10 A Correct.

11 Q So that I'm clear, is that after he was  
12 cuffed he wasn't immediately placed in a seated or  
13 side position, was he?

14 A No, he was not.

15 Q And he wasn't checked to ensure that he  
16 wasn't suffering from any breathing distress,  
17 correct?

18 A Not right away, no.

19 Q What does your -- does your -- well, strike  
20 that.

21 Does your police training tell you  
22 that you are supposed to place a subject that's in  
23 custody that's been cuffed into a seated position or  
24 side position to avoid breathing distress?

25 A I've never been trained that, no.

1           Q    So again, this would have been -- this  
2    would -- the failure for you to do that you're  
3    telling me is because you weren't trained to do that  
4    by the City of Ferguson?

5           A    I have not been trained by any department or  
6    police academy.

7           Q    You understood based upon your Taser  
8    training that with each load that you deliver to  
9    Jason, his risk of injury -- each Taser load that  
10   you delivered to Jason, that his risk of injury or  
11   death increased?

12          A    Correct.

13          Q    You also understood that he was at or maybe  
14   that he was at -- or did you understand he was at a  
15   heightened risk of injury due to his agitated state?

16          A    Correct. Like, I couldn't -- I didn't know  
17   if he was in an agitated state. I didn't know if he  
18   was in a drug-induced state.

19          Q    You understand that a thin build places an  
20   individual at a heightened risk of injury or death  
21   from a Taser, correct?

22          A    Correct.

23          Q    And you could see he had a thin build,  
24   correct?

25          A    He was thin, yes, but he also had a lot of

1 muscle to him.

2 Q And so you understood that you're delivering  
3 50,000 volts of current through an individual, and  
4 you've done that by your testimony three times,  
5 correct?

6 A Correct.

7 Q Did you discharge a fourth load into Jason?

8 A I have been told that the Taser --

9 MR. PLUNKERT: Let me object at this point.

10 THE WITNESS: Okay.

11 MR. PLUNKERT: To the extent that don't  
12 testify regarding what you -- your conversations  
13 with attorneys. If you consulted a document or  
14 learned from someone other than your attorneys,  
15 that's okay. But to the extent that the question  
16 asks for any communications between attorney-client,  
17 I would instruct you not to answer. Subject to that  
18 you're free to answer otherwise.

19 Q (By Mr. Floyd) So you told me that before in  
20 preparation for this deposition that you consulted  
21 two documents, your Taser training and the police  
22 report?

23 A Uh-huh.

24 Q Taser training document didn't tell you how  
25 many Tasers, how many loads you issued to Mr. Moore,

1 did it?

2 A No.

3 Q And the police report did tell you though,  
4 didn't it?

5 A It states three, yes.

6 Q Three times. And when you filled out that  
7 Taser -- or when you filled out that police report,  
8 you are required to fill that report out honestly,  
9 correct?

10 A Correct.

11 Q And you filled that out within 24 hours of  
12 the event, correct?

13 A Correct.

14 Q And in your report you indicated that there  
15 were three loads, correct?

16 A Correct.

17 Q Have you seen any documents today that  
18 change your position on that?

19 A I have not seen them, no.

20 Q What did you base the three -- what did you  
21 base the total of three Tases in your report, how  
22 did you -- what did you base that information on?  
23 How did you justify that information that there was  
24 three Tases? Not two, not four, not five; three?

25 A That's what I remember, pulling the trigger

1 three times.

2 Q Okay. I'm going to hand you another  
3 exhibit. What are we up to? 18? 18?

4 (Exhibit 18 was marked for  
5 identification by the court  
6 reporter.)

7 Q (By Mr. Floyd) This is the Bates stamp  
8 00091. Have you ever seen one of these types of  
9 documents before?

10 A I have not.

11 Q I'm representing that Exhibit Number 18 is  
12 the printout of the Taser download which documents  
13 the charges that were run through the Taser, as well  
14 as the time that those charges were run through the  
15 Taser.

16 So if you could look at this exhibit  
17 and you go down to 947, which is the one, two,  
18 three, four, fifth number in the left column from  
19 the bottom, that shows that there was an event on  
20 9/17 that was one second in duration. And I suspect  
21 that that would be when you spark your Taser?

22 A Yes. Spark test.

23 Q And tell me about the spark test.

24 A We hold the Taser up, turn it on, pull the  
25 trigger and make sure you've got a good spark as --

1 without the cartridge on it just so you know that it  
2 is functioning correctly.

3 Q When would you do a spark test?

4 A The beginning of your shifts.

5 Q Okay. And then move down to 948, which is  
6 the one below it. And on 9/17/11, 6:53 and 17  
7 seconds there is a charge, correct?

8 A Correct.

9 Q What's the duration?

10 A It says six seconds.

11 Q And then there's a 949 directly below that  
12 on 9/17/11 at 6 minutes, 53 seconds -- 6 hours, 53  
13 minutes and 22 seconds there is another charge. And  
14 if you do the math from the 6:53:17 to 6:53:22,  
15 that's 18, 19, 20, 21, 22. There's five seconds.

16 So this is documenting, as I  
17 understand it, the time that each discharge was made  
18 with the Taser, each load was given. And based upon  
19 this document here, it would appear that there was  
20 no gap in between the last three discharges; that  
21 they were continuous; and that there was no three  
22 seconds or two seconds in between discharges; and  
23 that at best there was a one-second gap between the  
24 first one. Do you see that?

25 A Yes.



1           Q    If that is in fact true, would you agree  
2   that that is wholly and completely inconsistent with  
3   the testimony that you gave about the lapse of time  
4   in between the loads where you Tased Mr. Moore and  
5   the period that you testified that you were giving  
6   him commands to comply and waited to assess whether  
7   he was going to comply before you would discharge  
8   him again?  Would you agree that this document is  
9   inconsistent with that testimony you gave?

10          A    I agree that my testimony states that I was  
11   giving him commands.

12          Q    And if this document is --

13               MR. PLUNKERT:  Hang on.  I don't know if he  
14   is done answering the question.

15          A    And I can't -- I can't go about how long I  
16   thought it was.  I mean, apparently this is showing  
17   that it was a second in between them, but there was  
18   three different bursts that I did.

19          Q    (By Mr. Floyd) You would -- if I'm  
20   interpreting this document correctly, which believe  
21   I am.

22          A    Right.

23          Q    It would show that there were four bursts?

24          A    This -- correct.  Apparently.  I remember  
25   three.

1           Q    Okay.  So there were four bursts.  And there  
2   was no time in between the last three according to  
3   this document.  Do you see that?

4           A    I do see that.  And I can't tell you why  
5   because I know there was time in between them.

6           Q    So you're acknowledging that if this  
7   document reads the way that I believe it reads, that  
8   the evidence contained on the download from the  
9   Taser weapon is inconsistent with the testimony that  
10  you've given in this deposition?

11          A    I agree with that, yeah.

12          Q    And if in fact the evidence that's contained  
13  on this document, Exhibit 18, which is the Taser  
14  download information, it would suggest that there  
15  was no gap between the last three Taser bursts and  
16  loads, of five-second loads into Mr. Moore?  Would  
17  you agree?

18          A    I agree that's what it says, yes.

19          Q    And you would agree from our testimony  
20  earlier that in order for a compliance command to be  
21  considered appropriate and proper, that you can't  
22  give those compliance commands while a subject is  
23  under load, correct?

24          A    On some subjects, correct.

25          Q    So this document, Exhibit Number 18, would

1 suggest that Mr. Moore was Tased four times,  
2 five-second bursts of 50,000 volts and that there's  
3 only a one-second gap between the first Tase. And  
4 the last three Tases came consecutively without any  
5 time for you to do a submission recognition  
6 assessment. Would you agree?

7 A I agree that's what it shows, yes.

8 Q Do you agree that issuing  
9 back-to-back-to-back Taser loads on a subject  
10 without performing an appropriate submission  
11 recognition assessment is inappropriate?

12 A I would agree, yeah.

13 Q Do you agree that Jason Moore's safety was  
14 not protected by the failure to place him in a side  
15 or seated position immediately after he was cuffed?

16 A I do not agree with that, no.

17 MR. FLOYD: I'm going to pass the questions  
18 to one of these gentlemen unless you want to take a  
19 break. Take a break.

20 MR. PLUNKERT: Okay.

21 THE VIDEOGRAPHER: Off the record at 12:27.

22 (Recess taken.)

23 THE VIDEOGRAPHER: Back on the record at  
24 12:39.

25 Q (By Mr. Floyd) Sir, I have just a couple of

1 questions. With regard to the CAD, did you ever see  
2 the transcript from the CAD related to this  
3 9/17/11 event?

4 A No, sir.

5 Q With regard to -- is it Lieutenant Ballard?

6 A Yes, sir.

7 Q I think I asked you this, but I wasn't sure  
8 what your answer was. Do you have a recollection as  
9 to when Officer or Lieutenant Ballard arrived in  
10 relation to when Moore was cuffed?

11 A I do not. I'm not quite sure when he  
12 arrived on scene.

13 Q And with regard to your Taser training, your  
14 certification as a Taser instructor, I would assume  
15 that you have Taser documents secondary to that  
16 training?

17 A I believe I do, yes.

18 Q And do you keep those at home on your  
19 computer or in a file, or how do you keep those?

20 A I keep them in the file at home. I recently  
21 moved not too long ago and not quite sure where  
22 they're at.

23 Q And I want to hand you a couple of exhibits.

24 (Exhibit 19 was marked for  
25 identification by the court

1 reporter.)

2 Q (By Mr. Floyd) The first one is marked  
3 Plaintiff's Exhibit 19.

4 MR. PLUNKERT: Thanks.

5 Q (By Mr. Floyd) Go ahead and take a look at  
6 that. I'm going to represent to you that this is  
7 information of warnings produced by Taser. And this  
8 would be information that is distributed to you  
9 personally from Taser.

10 A Uh-huh.

11 Q And you've seen this document before?

12 A Yes, sir.

13 Q And look down at the bottom. That date is  
14 May 1, 2010, correct, on the bottom left-hand  
15 corner?

16 A Correct.

17 Q And you would have read through this  
18 document?

19 A Correct.

20 Q We don't need to go through it now if you've  
21 read through it, but you did receive this document  
22 and you're aware of these warnings with Taser,  
23 correct?

24 A Yes, sir.

25 Q Okay.

1 (Exhibit 21 was marked for  
2 identification by the court  
3 reporter.)

4 Q (By Mr. Floyd) All right. And then I want  
5 to hand you what's marked Exhibit 21.

6 MR. FLOYD: That's the only one we've got?

7 MR. DOWD: Yes.

8 Q (By Mr. Floyd) Okay. So I'm going to just  
9 hand this to your counsel first. It's Ferguson --  
10 it's Bates number Ferguson 1418. And these are  
11 instructor certification lesson plan for Taser dated  
12 May 2010. And I'm going to hand this entire  
13 document to your counsel. And then if you could  
14 pass it to the witness.

15 MR. PLUNKERT: Is there an Exhibit 20?

16 MR. FLOYD: Sorry. I'm going out of order.  
17 My fault.

18 MR. DOWD: He is going out of chronological  
19 order.

20 A I have this one in my car.

21 Q (By Mr. Floyd) So that document there, you  
22 can thumb through it. Those would be the -- and  
23 tell me what that is.

24 A It's a lesson plan to teach the users on how  
25 to use the Taser.

1 Q And you're familiar with those documents and  
2 the information contained in those documents?

3 A Correct. I have not seen them since 2010.

4 Q What's the title of that document on the  
5 cover?

6 A "Taser Training Academy, Instructor  
7 Certification Lesson Plan."

8 Q And what's the date on it?

9 A May 2010.

10 Q Okay. And then I've got -- and we can hand  
11 that back and we'll keep them for the court  
12 reporter. We'll just leave them in the middle of  
13 the table here.

14 One thing I wanted to ask you on  
15 here, too. Right where this paper clip is marked,  
16 this page in particular, it's Version 17. It says  
17 Ferguson 1483. And this page is paper clipped. It  
18 says. "Cardiac. We have issued new Taser target  
19 guide." And this is dated May of 2010?

20 A Correct.

21 Q I want to reference this page for you. If  
22 you can identify the top of that page. You can take  
23 the exhibit.

24 A Yeah. I know the page.

25 Q Okay. And for the videographer. You're

1 familiar with the contents on this page?

2 A Yes, sir.

3 Q And you were familiar with the contents on  
4 this page before September 11 -- September 17, 2011?

5 A Yes, sir.

6 (Exhibit 20 was marked for  
7 identification by the court  
8 reporter.)

9 Q (By Mr. Floyd) And then finally I want to  
10 hand you what's marked Plaintiff's Exhibit 20. Can  
11 you identify that document for me?

12 I represent that that would be more  
13 information and warnings released by Taser as of May  
14 of 2011.

15 A Yes, sir.

16 Q You're familiar with this document?

17 A Yes. This is the new -- this was the new  
18 version, I would guess.

19 Q As of May of 2011?

20 A Correct.

21 Q And you received -- you received this  
22 information either in your -- and/or both the  
23 July 2011 training from Taser International, and you  
24 also receive emails from Taser?

25 A I used to, yes.



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1 Q Back then you did?

2 A Back then I did, yes.

3 Q And you would have received this email?

4 A Correct.

5 Q You have seen this document?

6 A Yes, sir.

7 Q And you would have seen it before

8 December 17, 2011?

9 A Yes, sir.

10 Q And you would have read it and been familiar  
11 with it, correct?

12 A Correct.

13 MR. FLOYD: Those are all the questions I  
14 have. Thank you.

15 THE WITNESS: You're welcome.

16 [EXAMINATION]

17 QUESTIONS BY MR. JOHNSON:

18 Q Officer Kaminski, my name is Todd Johnson.  
19 I represent other family members of Mr. Moore that  
20 are involved in this case. My questions hopefully  
21 will bounce around a little bit and try and not be  
22 too duplicative of Mr. Floyd's questions.

23 I want to start with the date in  
24 question that we're here for today. Who dispatched  
25 you to the scene?

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1           A     Whoever was working dispatch that morning.

2     I don't recall which dispatcher it was.

3           Q     The dispatcher, is that a Ferguson Police  
4     Department employee?

5           A     Yes.

6           Q     And was that the arrangement in September of  
7     2011?

8           A     Correct.

9           Q     The Ferguson communication police department  
10    employees dispatch Ferguson Police Department  
11    officers to scenes, correct?

12          A     Yes, sir.

13          Q     Do you remember if it was a male or a  
14    female?

15          A     I do not remember.

16          Q     The information that you were provided that  
17    dispatched you to Henquin and Airport, is all of the  
18    information that you recall receiving from dispatch  
19    about this occurrence listed in your reports?

20          A     I believe so. I'll take a look at it again.

21          Q     Feel free to do so.

22          A     I believe it is, yes.

23          Q     Those are all the words you recall hearing?

24          A     Yes.

25          Q     Do you recall the tone of the dispatcher's

1 voice when they dispatched you to this particular  
2 scene?

3 A No, sir.

4 Q Do you have a memory today that the  
5 dispatcher was frightened about this man?

6 A No, sir.

7 Q When you arrived to the scene and you  
8 encountered the lady that you set forth in your  
9 report who gave you another description of what had  
10 happened -- and feel free to look at that as well,  
11 sir.

12 A Let me take a look at that.

13 Q I think it's by Abson Road. Abston. I'm  
14 sorry.

15 A Yeah. The lady in the white Pontiac, yes.

16 Q The lady in the white Pontiac, the words  
17 that she gave you about this occurrence, are those  
18 all the words that you remember this lady telling  
19 you about the occurrences that are set forth in your  
20 report?

21 A Yeah. Pretty much.

22 Q Do you recall this lady's demeanor when she  
23 was providing you that information?

24 A She was excited.

25 Q Was she frightened?

1           A    I wouldn't say frightened, no.

2           Q    Did she -- was this -- was Mr. Moore ever  
3   described to you by dispatch or witnesses as violent  
4   before you arrived to the scene?

5           A    I had got the call for him beating on  
6   vehicles. So I would take that as being in a  
7   violent manner, yes.

8           Q    That's the conduct that you use synonymous  
9   with what you consider to be violent?

10          A    Correct.

11          Q    Violent towards property?

12          A    Beating on cars I believe is just a violent  
13   manner.

14          Q    Was he beating on it in a violent manner?  
15   Was it described to you like that?

16          A    Beating on a vehicle or vehicles passing by.

17          Q    No information that was described that he  
18   was striking people?

19          A    Correct.

20          Q    He never struck any people, including  
21   yourself that day, did he?

22          A    He attempted to.

23          Q    Did he strike you?

24          A    He did not strike me, no.

25          Q    Did he strike anybody else that day?

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1           **A**    No.

2           **Q**    Did he break anything in your presence?

3           **A**    Not in my presence, no.

4           **Q**    Did you receive information that he had  
5 broken any property?

6           **A**    I did not receive any information about any  
7 property damage at that time, no.

8           **Q**    How many vehicles went in either direction  
9 on Airport Road between the time you first arrived  
10 to the scene and when you first used your Taser?

11          **A**    I could not recall on how many there were.

12          **Q**    How many vehicles went in either direction  
13 on Airport Road between any time you arrived to the  
14 scene and when you observed Mr. Moore not to be  
15 breathing or having difficulty breathing?

16          **A**    When he was having difficulty breathing or  
17 not breathing, I wasn't paying attention on how many  
18 vehicles were in the road.

19          **Q**    Can you give me in any number, the number of  
20 vehicles that travel on Airport Road in either  
21 direction between the time you first encountered the  
22 scene at Henquin and Airport and the time you first  
23 observed Mr. Moore have difficulty breathing?

24          **A**    I couldn't give you a number, no.

25          **Q**    Is the only vehicle that you know was in

1 your presence after you arrived to Henquin and  
2 Airport Officer White's cruiser?

3 A No. He was not there before I got there.

4 Q I'm asking for the time between when you  
5 first arrived to the scene and when you recalled  
6 Mr. Moore have difficulty breathing. So that gap in  
7 time, okay?

8 A Okay.

9 Q In that gap in time is the only vehicle that  
10 you know you have a memory of being present other  
11 than your own cruiser Officer White's cruiser?

12 A Physically, yes. That is the only vehicle  
13 that I realized that was there. I heard traffic in  
14 the background.

15 Q Who called for the ambulance?

16 A I did.

17 Q What information did you give them?

18 A I believe I told them -- I told dispatch,  
19 because what we do is we radio our dispatch. Our  
20 dispatch contacts the EMS. I advised that a Taser  
21 was deployed; we need EMS.

22 Q And is the reason that you summoned EMS  
23 because you deployed the Taser?

24 A Yes, sir.

25 Q Did you summon EMS because of Mr. Moore's

1 labored breathing?

2       **A**   No. I summoned EMS before we had the  
3 breathing problem. Once we noticed he was not  
4 breathing, we called and advised them to have EMS  
5 expedite because of the breathing issue.

6       **Q**   Who radioed for EMS the second time?

7       **A**   Officer White did.

8       **Q**   And what information, if you know, did he  
9 give EMS?

10       **A**   He just, as far as I can remember, he  
11 advised that he was not breathing, to have them  
12 expedited.

13       **Q**   What was the gap in time between you  
14 summoning EMS and Officer White summoning EMS?

15       **A**   I could not tell you.

16       **Q**   So did you summon to EMS before you observed  
17 Mr. Moore have difficulty breathing?

18       **A**   Yes.

19       **Q**   Did you summon for EMS before he was rolled  
20 to his side?

21       **A**   Yes.

22       **Q**   How long before?

23       **A**   Not long before. It was during one of the  
24 five-second bursts. We had a department policy that  
25 anytime somebody is Tased, you summons EMS. So I

1 Tased him. I automatically got on the radio and  
2 summonsed EMS.

3 Q Can you demonstrate for the jury this  
4 pinwheel motion that Mr. Moore's fists were engaged  
5 in prior to your deployment of the Taser?

6 A I could do it with one arm due to a shoulder  
7 injury I have right now.

8 Q Sorry to hear that.

9 A But he --

10 MR. PLUNKERT: Watch your microphone.

11 A He was running towards me going like this.

12 Q (By Mr. Johnson) Were these fists clenched?

13 A Yes.

14 Q Both of them?

15 A Yes.

16 Q Did you have the shoulder injury on  
17 September 17, 2011?

18 A No, sir.

19 Q After you deployed the Taser for the first  
20 time, I think you testified in earlier questioning  
21 the sights were pointed to what side of his body?

22 A It was midsection on the right side.

23 Q Do you use the terms upper and lower probe  
24 in the Taser? We know there's two probes, right?

25 A Right.



1           Q    Do you use, as a certified user and  
2   instructor of a Taser X26, do you use the terms  
3   upper and lower probe?

4           A    On the Taser form, yes.

5           Q    And is the Taser form set forth as part of  
6   the report materials in this case?

7           A    Correct. Any time a Taser is deployed or  
8   shown in person, that Taser form is --

9           Q    Could you refer to your report and provide  
10   me the exhibit number we're on?

11           MR. PLUNKERT: I think he may have also been  
12   in the middle of the answer, and then we had a  
13   little bit of an interruption. So as long as he's  
14   allowed to give the answer to that question earlier,  
15   then, yeah, find whatever you need to.

16           MR. JOHNSON: Yeah. I have no problem. I  
17   just want to know what exhibit this is.

18           Q    (By Mr. Johnson) What exhibit is this, sir?

19           A    12.

20           Q    Okay. Looking at Exhibit 12, are there any  
21   other parts of Exhibit 12 that you yourself  
22   completed as part of this body of report other than  
23   your own report that was part of the offense report,  
24   sir?

25           A    No. Just my portion of the offense report.

1 Everything is done by a supervisor.

2 Q And what part of Exhibit 12 did you prepare?

3 A Page 1 through 4.

4 Q Okay. And in this case there are  
5 supplements to your offense report, correct?

6 A Correct.

7 Q And obviously those are submitted by  
8 different officers of the department, correct?

9 A Correct.

10 Q When we're looking at the Ferguson Police  
11 Department Taser International use report that is on  
12 pages 12 and 13, did you provide any information for  
13 the creation of that portion of Exhibit 12?

14 A I provided the Taser serial number. I  
15 provided Mr. Moore's information for the supervisor  
16 that completed this. And I -- excuse me -- provided  
17 where the darts, the probes were located.

18 Q You didn't actually fill out pages 12 and 13  
19 of Exhibit 12, did you, sir?

20 A No.

21 Q Did Lieutenant Ballard do that to your  
22 knowledge?

23 A Yes.

24 Q Do you recognize that as his handwriting?

25 A Correct.

1           Q    Do you know what information Lieutenant  
2   Ballard relied on for purposes of his creation of  
3   pages 12 and 13 of Exhibit 12?

4           A    As far as to my knowledge is what I told him  
5   on scene and what he observed.

6           Q    So the, as far as you know, the sources of  
7   information for pages 12 and 13 of Exhibit 12 would  
8   be you verbally giving Lieutenant Ballard  
9   information at the scene, correct?

10          A    Correct.

11          Q    And then his own observations at the scene?

12          A    Correct.

13          Q    The portions of pages 12 and 13 of  
14   Exhibit 12 that discuss the type of incident, are  
15   you the person that gave Lieutenant Ballard that  
16   type of incident which permitted him to circle the  
17   type of incident that it was?

18          A    Yes.

19          Q    Did you review Lieutenant Ballard's Taser  
20   use report after he created it back in 2011?

21          A    No, sir.

22          Q    Is the first time that you reviewed this use  
23   report, was it in preparation for today's  
24   deposition?

25          A    Yes, sir.

1           Q    Are there any parts of pages 12 and 13 of  
2   Exhibit 12 that you believe to be Lieutenant  
3   Ballard's observations as opposed to your own?

4           A    Let me look at it.

5           Q    Absolutely.

6           A    I don't see anything, no.

7           Q    And we'll have a chance to ask Lieutenant  
8   Ballard about this, but from your own observation  
9   today, you believe you're the primary source of  
10   information that enabled him to complete the report?

11          A    Correct.

12          Q    Obviously Lieutenant Ballard, was he present  
13   when you discharged the Taser at all in this case?

14          A    I do not believe so. I believe he was  
15   called for after the incident was over.

16          Q    Who called for Lieutenant Ballard?

17          A    I believe it was either Officer White or  
18   Officer Bebe.

19          Q    And for what reason, to your knowledge, was  
20   he summoned to the scene?

21          A    Any time we have a major incident, a  
22   supervisor is to respond.

23          Q    Major incident meaning somebody was  
24   seriously injured or died?

25          A    Correct.

1           Q   Going back further to pages 14 through --  
2   just 14 for now, the use of force report, do you  
3   know who created that, sir?

4           A   Lieutenant Ballard.

5           Q   Did you provide Lieutenant Ballard any  
6   information that enabled him to fill out this use of  
7   force report that is part of Exhibit 12?

8           A   Yeah. I gave him the information.

9           Q   Is there any information on the use of force  
10   report component of Exhibit 12 that you believe to  
11   be from Lieutenant Ballard's observations as opposed  
12   to your own?

13          A   I don't believe so.

14          Q   Did Chief Jackson ever review this use of  
15   force report with you at any point?

16          A   No.

17          Q   Was there any department review of your use  
18   of force in this case?

19          A   That I do not know. Not with me.

20          Q   Yeah. I'm asking if anybody sat you down --

21          A   No, not with me.

22          Q   -- and walked you through your use of force?

23          A   Not with me.

24          Q   Was there a protocol or general order in  
25   your department for any type of review of use of

1 force with the Ferguson Police Department?

2 A Not to my knowledge.

3 Q Have you ever, to your knowledge, ever sat  
4 down with any superior within the Ferguson Police  
5 Department to review your use of force?

6 A I have, yes.

7 Q How many times?

8 A Once.

9 Q Before or after this incident?

10 A After.

11 Q And what were the facts and circumstances,  
12 sir?

13 A It was a dry stun with the Taser. We sat  
14 down and went over the report together.

15 Q And what were the facts and circumstances  
16 that caused you to have to use the dry stun mode of  
17 the Taser device?

18 A Resisting arrest on a -- kind of a home  
19 invasion.

20 Q Okay.

21 A It was a child's father and child's mother  
22 getting into it. He tried to break into the house.  
23 And when we got there, he physically fought us. And  
24 I -- one of the officers had him down trying to get  
25 his arms around him. And I gave him a dry stun

1 right on the buttocks. And just one dry stun, and  
2 he complied.

3 Q And if you know, why were you summoned to go  
4 through that particular use of force?

5 A Why?

6 Q Why did you sit down with the department and  
7 go through that use of force?

8 A I just went and explained, you know,  
9 going -- my lieutenant and I sat together and did  
10 the use of force report together.

11 Q Okay. So when we see page 14 of Exhibit 12,  
12 you're saying in that case you just sat down with  
13 the lieutenant and jointly created the use of force  
14 report?

15 A I gave him information when he did -- when  
16 he was filling out the use of force report, I was  
17 gone for the day. They sent me home after I had my  
18 report finished.

19 Q Have you ever known Colonel Jackson to have  
20 reviewed any use of force reports of Ferguson?

21 A I do not know at all.

22 Q Have you ever known any Ferguson Police  
23 Department officer to have been disciplined with use  
24 of force as the reason for discipline?

25 A I do not know.

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1           Q   And I'm asking for before or after September  
2   of 2011.

3           A   Right. I -- it's pretty quiet around the  
4   station when it comes to that stuff.

5           Q   Have -- what do you mean by quiet?

6           A   It's not --

7           Q   People don't talk about it?

8           A   People don't talk about it.

9           Q   Okay. Any citizen complaints registered  
10   against you as a Ferguson Police Department officer,  
11   to your knowledge?

12          A   Not that I'm aware of.

13          Q   Any officer versus officer complaints  
14   registered towards you and your conduct as a  
15   Ferguson Police Department officer, sir?

16          A   None that I'm aware of.

17          Q   And when I ask about these complaints, is it  
18   your testimony that you're aware of no such  
19   complaints either before or after September of 2011?

20          A   Correct.

21          Q   Do you get information about any type of  
22   major incident at roll call?

23          A   Yes.

24          Q   Is that how you would receive if there's  
25   some type of incident in the field that some



1 superior or commander needed to make you aware of as  
2 a patrol officer?

3 A Yes, sir.

4 Q And has that always been the case where that  
5 information would be transmitted during roll call?

6 A Yes, sir.

7 Q At any particular roll call session, did  
8 anybody ever make you aware that there had been a  
9 complaint against an officer related to the use of  
10 force?

11 A No.

12 Q Or the use of a Taser?

13 A No.

14 Q At any roll call, was there any type of  
15 incident involving force addressed with the  
16 department?

17 A No.

18 Q At any roll call, was there any type of  
19 criticism or evaluation about some use of force  
20 incident?

21 A No.

22 Q Any type of taser-related incident ever  
23 addressed at roll call?

24 A Other than my sergeant shooting the ceiling,  
25 no.

1 Q What happened there?

2 A Desk pop, that's what we call it. He didn't  
3 realize the cartridge was on it, and he did his  
4 spark test and shot the ceiling.

5 Q Causing some property damage, I guess?

6 A It just stuck in the drop ceiling tiles.

7 Q I forgot to ask you a question earlier about  
8 the probes because you were looking at the report  
9 and I was talking too much. The probes, are they  
10 upper and lower probes? Do you have any type of  
11 definition like that?

12 A We call them upper and lower. The upper  
13 one -- the top dart has a different angle than the  
14 bottom dart does.

15 Q When you use your sight -- and there's one  
16 laser, correct?

17 A Correct.

18 Q One laser sight on the device involving  
19 Mr. Moore, correct?

20 A Correct.

21 Q Do you still use the same X26 today that you  
22 did in September of 2011?

23 A No. That one has been put in evidence.

24 Q What do you mean put in evidence?

25 A The day of the incident, they wrapped it up,

1 put it in evidence, and it's been there since.

2 Q At the department?

3 A I drop it into evidence. And I have no idea  
4 where it goes from there.

5 Q Who asked you to put it in evidence?

6 A Lieutenant Ballard.

7 Q Do you have any information about how this  
8 device was downloaded to obtain the data that  
9 Mr. Floyd showed you earlier?

10 A I do not know how that worked.

11 Q As a certified user and instructor on the  
12 use of the Taser, do you have an understanding how  
13 this data is downloaded off the device?

14 A I do not, no.

15 Q When you used your laser sight on  
16 September 17, 2011, which probe followed that laser  
17 sight?

18 A They go at an angle. I mean, the laser  
19 sight is in the middle, and they go at an angle.

20 Q And your testimony earlier was you focused  
21 your sight on his pelvic area?

22 A Yes, sir.

23 Q And at a distance of 8 to 10 feet I think,  
24 if I recall your earlier testimony correctly?

25 A Approximately that feet, yes.

1           Q    After you deployed the Taser for the first  
2   time -- first of all, Mr. Moore was facing you when  
3   you deployed the Taser, correct?

4           A    Correct.

5           Q    And after you deployed the Taser, I think  
6   you testified he fell forward?

7           A    Correct.

8           Q    In your report when you testified earlier  
9   that he attempted to rise, were you facing him when  
10   he attempted to rise?

11          A    Yes.

12          Q    And did he attempt to rise in a fashion  
13   where his body or torso was facing you?

14          A    It was facing the ground.

15          Q    So when he got to his knees, his torso was  
16   still facing the pavement?

17          A    Correct.

18          Q    At any point -- strike that.

19                   What distance was his torso from the  
20   ground when he was attempting to rise before you  
21   deployed the Taser a second time?

22          A    Probably six inches or so.

23          Q    And when he attempted to rise a third time  
24   causing you to use the Taser a third time possibly,  
25   at what distance was his torso from the ground?

1           A    I'd say about the same.

2           Q    Did he ever rise completely to his knees  
3    where his torso was facing you in any fashion?

4           A    No.

5           Q    Is the only resistance that you observed  
6    between the time you first deployed the Taser and  
7    the time you realized that he was having difficulty  
8    breathing, this attempting to rise to the ground in  
9    a fashion that you just told me about?

10          A    Correct.

11          Q    He never lunged at you?

12          A    No.

13          Q    And at what distance from you was he when he  
14    attempted to rise the first time?

15          A    3 feet maybe.

16          Q    At what distance was he from you when he  
17    attempted to rise the second time?

18          A    Approximately the same.

19          Q    When he was attempting to rise the first  
20    time, could you see his hands?

21          A    His hands were on the pavement.

22          Q    So they weren't clenched?

23          A    No.

24          Q    When he attempted to rise the second time,  
25    could you see his hands?

1           A    I could see one of them.

2           Q    And where was the other one when you  
3   couldn't see that first one?

4           A    It was kind of on his side to where the  
5   angle I couldn't see it.

6           Q    So the second time he tries to rise, his  
7   hands were clenched?

8           A    Not at that time, no.

9           Q    In the times that he attempted to rise, was  
10   he swinging his hands at you?

11          A    No.

12          Q    Did you ever have the subjective belief,  
13   sir, that he was attempting to flee after you used  
14   the Taser?

15          A    After using the Taser and somebody gets up,  
16   they are usually trying to flee, correct.

17          Q    He never got that far though?

18          A    No.

19          Q    Did he ever utter to you that he was trying  
20   to flee?

21          A    No.

22          Q    The only physical conduct that you saw of  
23   Mr. Moore was him putting his hands onto the  
24   pavement and pushing himself up to where he couldn't  
25   even get on his knees yet, correct?

1           A     He was on his knees the second time, yes.

2           Q     But not in an aspect on his knees where he  
3     was facing you in any sense?

4           A     No.

5           Q     Or all the way up where his torso was up  
6     which would enable him, obviously, to get to his  
7     feet?

8           A     Correct.

9           Q     Did Mr. Moore make any verbal threats  
10    towards you at any point after you Tased him?

11          A     No.

12          Q     Did he make any verbal threats to other  
13    persons in your presence after you Tased him?

14          A     No.

15          Q     Did he ever pound on your car?

16          A     When I'm doing body work, yes.

17          Q     No. Did he? Did Mr. Moore?

18          A     No. No, he did not.

19          Q     Did he ever pound on Mr. White's car?

20          A     No.

21          Q     Did he pound on any cars in this business,  
22    this washer business that you were at that day?

23          A     No. There were no vehicles in the parking  
24    lot that day.

25          Q     We see a vehicle in the picture, but you're

1 saying that day --

2 A There was --

3 Q -- the vehicles were the cruisers?

4 A Cruisers, correct.

5 Q Patrol cars. Did you ever utter the phrase  
6 "Taser, Taser, Taser" at any point that day?

7 A Yes, before the first Tasing.

8 Q It's not in your report though, correct?

9 A I don't know if it's in there or not. It's  
10 not in my report, so I -- it's in memory that any  
11 time you pull the trigger, you say it.

12 Q Mr. Floyd asked you about writing reports.  
13 And you agree with me that you want factually  
14 accurate and truthful reports in your business,  
15 correct?

16 A Correct.

17 Q Did you at any point after September 17,  
18 2011, go back and attempt to revise your report in  
19 any way?

20 A No.

21 Q Did you provide information or request to  
22 any peers in your department that you would like to  
23 add or change anything in your portion of the  
24 report?

25 A No, sir.



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1           Q    Did you make any requests to Lieutenant  
2   Ballard that you would like for him to add or change  
3   anything in the portions of Exhibit 12 where you  
4   provided him information?

5           A    Other than him requesting my spelling and  
6   grammar, no.

7           Q    Were you disciplined at all relating to this  
8   incident?

9           A    I was sent home for the day as department  
10   policy on any kind of incident, occurrence. Then I  
11   was advised to stay home the following day also.

12          Q    By who?

13          A    By Lieutenant Ballard.

14          Q    Would he be your direct report in your chain  
15   of command on September 17, 2011?

16          A    Yes, sir.

17          Q    I understand that this was a weekend?

18          A    Correct.

19          Q    Was he the acting chief that weekend as far  
20   as staffing goes?

21          A    He was the acting commander, correct.

22          Q    Because we talked to Mr. Jackson, the  
23   former-Colonel Jackson, last Friday. And he said he  
24   might have been out of the area on vacation. Do you  
25   recall anything of that nature, sir?

1           **A**    I do not recall that, no.

2           **Q**    Okay. To your knowledge, was Lieutenant  
3    Ballard the highest ranking officer within the  
4    Ferguson Police Department the weekend of  
5    September 17 and 18, 2011?

6           **A**    Yes.

7           **Q**    Did you receive what you considered to be  
8    any type of retraining after this incident?

9           **A**    We get the recertification on the Tasers  
10   every year. I did not recertify as an instructor.  
11   They decided to let another officer have that. Up  
12   until this last year, I have been receiving my  
13   recertification classes, yes.

14          **Q**    Tell me about the facts and circumstances of  
15   why you no longer were going to be a Taser  
16   instructor as opposed to just a certificate holder.

17          **A**    I'm not sure why. I requested to put in --  
18   I put in, requested to take the recertification for  
19   the instructor class. And they went with another  
20   officer.

21          **Q**    Who informed you of that decision?

22          **A**    Officer Brannan.

23          **Q**    Would you consider Officer Brannan kind of  
24   the head of the Taser use and certification aspect  
25   of the Ferguson Police Department?

1           **A**    He was, yes.

2           **Q**    We heard from Mr. Jackson that he was  
3   intimately involved in procuring Taser devices. Is  
4   that your belief?

5           **A**    Correct.

6           **Q**    Did you have any involvement personally in  
7   procuring the Taser devices?

8           **A**    I -- they asked my opinion on them because I  
9   had them prior in Cool Valley. And I just advised  
10   them they were a very effective tool.

11          **Q**    And who got the instructor position over you  
12   after this incident?

13          **A**    His name is Eric Davis.

14          **Q**    And is he an officer with the department?

15          **A**    Yes.

16          **Q**    Had you signed up for the CIT training as of  
17   September 17, 2011?

18          **A**    I don't remember the exact dates when I was  
19   signed up. Every officer through our department has  
20   gone through the training. So they were sending two  
21   of us a week.

22          **Q**    You began in 2010 with the department,  
23   correct?

24          **A**    Correct.

25          **Q**    Tell me about your memory of officers being

1 sent by the Ferguson Police Department for CIT  
2 training between when you started in February of  
3 2010 and this incident in September of 2011.

4 A I don't recall.

5 Q Were they all sent at once?

6 A No.

7 Q Were they sent on any periodic basis?

8 A The academy has a certain amount of classes  
9 a year. I'm not exactly sure how many they are a  
10 year, the 40, 48-hour class, between 40 and 48  
11 hours. So the department was sending two people to  
12 each class. And I don't remember how many went to  
13 the class before me or after me. I can't recall  
14 that.

15 Q Is there a training coordinator that you  
16 conferred with to enroll in this case?

17 A Officer Greg McDaniel, he was the  
18 coordinator when they got the spots through the  
19 academy for us.

20 Q How were you notified, sir, that you were  
21 going to take the CIT training?

22 A Email and by paper.

23 Q And who sent you the email?

24 A Officer McDaniel.

25 Q And did anybody attend that training with

1 you from your department?

2 A There was. Give me a minute. It's going to  
3 take me a minute to remember that.

4 I honestly can't remember who was  
5 with me there.

6 Q Would you still have that email which  
7 alerted you that you were to take the training?

8 A No. No. We -- they got a new server and  
9 everything at work when we switched to a different  
10 report writing system.

11 Q When was that, sir?

12 A August 2012.

13 Q Did you ever place Mr. Moore under arrest?

14 A No.

15 Q Was he cited with any offense?

16 A No. He went from the scene in the ambulance  
17 to the hospital. So I mean, he was never placed  
18 under arrest and never cited, no.

19 Q When were you alerted he had passed?

20 A They sent Officer Bebe to the hospital from  
21 the scene, and probably about a half an hour after  
22 that.

23 Q And what did Mr. Bebe tell you?

24 A He advised that he passed at the hospital  
25 and they were notifying the family.

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1 Q Anything else, sir?

2 A No.

3 Q Is Mr. Bebe the only person you communicated  
4 with about the facts and circumstances of  
5 Mr. Moore's passing?

6 A At that time, yes.

7 Q Did you subsequently speak with other  
8 officers within the department about the facts and  
9 circumstances of his death?

10 A Officer White and Lieutenant Ballard.

11 Q And tell me about that conversation.

12 A I just basically advised them that I was  
13 told that he passed at the hospital. Lieutenant  
14 Ballard already knew because Officer Bebe advised  
15 him before he advised me.

16 Q Did you check for any warrants on this  
17 individual before you arrived on the scene?

18 A No.

19 Q What is -- you gave us your dimensions.  
20 What about Mr. White's dimensions, height and  
21 weight?

22 A Officer White?

23 Q Yes, sir.

24 A Back then he's six-five, probably about 210.

25 Q Did you understand that Officer White was on

1 his way to the scene before you first encountered  
2 Mr. Moore?

3 A I knew there were officers heading my way.  
4 I did not know where they were coming from, and I  
5 did not know how close they were.

6 Q Which officers do you believe were headed  
7 your way? Can you tell me by name?

8 A I knew Officer White was. And as far as  
9 that, that's all I knew.

10 Q There were other officers obviously staffed  
11 that morning, correct?

12 A Correct.

13 Q How many officers, patrol officers were  
14 staffed that morning?

15 A I don't know exactly. I know there was at  
16 least five.

17 Q And is there a zone or beat that you cover?

18 A We rotate. We got four sectors. We rotate  
19 sectors a day.

20 Q What sector was this?

21 A That was in sector five.

22 Q And how many officers were staffed to sector  
23 five September 17, 2011?

24 A One. There is one per sector.

25 Q Okay. Over your radio, did you hear

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1 geographically where the other officers were before  
2 you arrived to the scene?

3 A No.

4 Q Did you hear geographically where the other  
5 officers were before you exited your vehicle and  
6 encountered Mr. Moore?

7 A No.

8 Q Did you have an understanding whether any of  
9 the officers assigned to your patrol on  
10 September 17, 2011, had CIT training?

11 A Not to my knowledge. I don't know.

12 Q Do you know of anybody in the communications  
13 division that had CIT training as of September 17,  
14 2011?

15 A Communication as in dispatch?

16 Q Yes, sir.

17 A I don't believe anyone did.

18 Q Do you know if anybody ever in dispatch has  
19 received CIT training in Ferguson?

20 A Every one of them have now.

21 Q In communications?

22 A Yes.

23 Q Did you speak with anybody from Mr. Moore's  
24 family about this incident?

25 A When he was being transported in the



1 ambulance, a family member -- I'm not sure who it  
2 was -- did come to the scene. And we advised him  
3 what hospital they were going to.

4 Q And the family member you encountered male  
5 or female?

6 A Female.

7 Q Elderly or not elderly?

8 A I would say middle age.

9 Q Okay. Do you recall any words or statements  
10 this family member made at the scene?

11 A No, I do not.

12 Q Do you recall anybody -- strike that.

13 Do you know anybody who saw the  
14 interaction between you and Jason Moore that day?

15 A The lady in the white Pontiac I saw in the  
16 area still. Other than that, I don't know. I don't  
17 even know if she saw anything.

18 Q Nobody has come to you and said they saw  
19 this encounter, have they?

20 A Correct.

21 Q Obviously, that's part of your  
22 investigation. You want to know if anybody present  
23 saw the facts and circumstances, correct?

24 A Correct.

25 Q Can you tell me by name any persons in the

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1 community who appeared at the incident scene after  
2 this incident occurred?

3 A No, I cannot.

4 Q Did you speak with any people that you  
5 associate to be with Mr. Moore's family after the  
6 scene of the occurrence on September 17, 2011?

7 A No, I have not.

8 Q Do you know what agonal breathing is?

9 A I am not aware, no.

10 Q Well, I'll use your verbiage. Let's go with  
11 difficulty breathing. Okay?

12 A Okay.

13 Q And that's how you described Mr. Moore's  
14 condition after this occurrence, correct?

15 A Correct.

16 Q Did he use any words that you heard when he  
17 was on the ground?

18 A No.

19 Q Did he use any words that you could make out  
20 while he was having trouble breathing?

21 A No.

22 Q Did he appear conscious to you when he was  
23 having trouble breathing?

24 A Yes.

25 Q And the trouble breathing, is this labored

1 breathing like if you were to run a long ways and  
2 you were having a hard time catching your breath, or  
3 is this something different?

4 A It was something different. It was -- it  
5 was shallow breathing.

6 Q Like he was having a hard time catching his  
7 breath? Shallow breathing?

8 A Correct.

9 Q Any groans or moans or murmurs?

10 A I did not hear anything, no.

11 Q Did you observe any other part of his body  
12 to have any type of difficulty? And what I'm  
13 talking about is sometimes in the case of a trauma,  
14 we know that, you know, ears and eyes and things  
15 like that can have difficulty as well. Anything  
16 like that, sir, or was it just the breathing that  
17 you observed?

18 A Just the breathing.

19 Q Did you observe any type of marks on  
20 Mr. Moore's body that you attributed to the use of  
21 the Taser?

22 A There's a couple abrasions on his knees, I  
23 believe, from falling onto the concrete.

24 Q Any other abrasions that you noted on his  
25 body?

1           A    Not that I did, no.

2           Q    Who secured Mr. Moore to handcuff him?

3           A    Officer White.

4           Q    And how did he do that?

5           A    I had the Taser. Officer White came in,  
6 pulled his arms behind him and put the restraints  
7 on.

8           Q    Did he use his feet or legs or knees in any  
9 fashion to secure Mr. Moore?

10          A    No. I don't recall.

11          Q    Any scrapes to Mr. Moore's face that you  
12 observed?

13          A    I did not observe any, no.

14          Q    Any types of contusions or bruises that you  
15 observed to Mr. Moore that you attributed to this  
16 encounter?

17          A    Not that I saw.

18          Q    Did he have any types of scrapes,  
19 lacerations or bruises before you used the Taser  
20 that day?

21          A    Not that I can remember.

22          Q    You didn't know him, correct?

23          A    I did not know him.

24          Q    Did you know him professionally as somebody  
25 you had had a law enforcement encounter with before

1 that day?

2 A No.

3 Q Did Officers White or Ballard or Bebe tell  
4 you that they had encountered this individual  
5 before?

6 A They have not told me, no.

7 Q Mr. Moore does have siblings, brothers and  
8 sisters. When I say family members, I'm including  
9 the word siblings as far as brothers and sisters.  
10 Any law enforcement encounters you've had with  
11 Mr. Moore's brothers and sisters that you can tell  
12 us about today?

13 A Not to my recollection, no.

14 Q Any communication with any of those siblings  
15 about this encounter that we've talked about,  
16 September 17, 2011?

17 A In August when they were doing the protests,  
18 I heard somebody from the crowd scream Jason Moore's  
19 name, but other than that that's all I can think of.  
20 I couldn't even tell who it was.

21 (Exhibit 22 was marked for  
22 identification by the court  
23 reporter.)

24 Q (By Mr. Johnson) We're going to give you  
25 Exhibit 22 which is another photograph of the area

1 of this encounter, sir. And you've been kind enough  
2 to tell us the different areas of this parking lot  
3 that you recall the different parts of this incident  
4 occurring. And I want to make sure that we have a  
5 different vantage point --

6 A Uh-huh.

7 Q -- where we can map out the different things  
8 that happened that day. I want to start on  
9 Exhibit 22 with -- and I'm going to ask you to mark  
10 with the Number 1 --

11 A Okay.

12 Q -- the location where you first observed --  
13 well, the location where you first observed  
14 Mr. Moore, is it contained on Exhibit 22?

15 A No, it's not. It's not there.

16 Q Let's start then with the location where you  
17 saw Mr. Moore and you notified in your report that  
18 he was standing near the curb of Airport Road. Can  
19 you mark with a Number 1 on Exhibit 22 that? Can  
20 you hold that up for the camera so they can get it?

21 A It's going to be kind of hard to see. Right  
22 there.

23 Q You make it as -- make it as thorough as you  
24 want, sir.

25 MR. PLUNKERT: Put an X for the pointing.

1           Q    (By Mr. Johnson) On Exhibit 22, does it  
2    contain an area where you parked your patrol vehicle  
3    that day?

4           A    I don't believe so.

5           Q    Would it be located, as you are looking at  
6    Exhibit 22, to the right of that photograph?

7           A    Correct.

8           Q    Does Exhibit 22 contain a part of the  
9    premises where you were standing when you discharged  
10   your Taser?

11          A    Yeah.

12          Q    Can you mark with the Number 2 where you  
13   were standing when you first discharged the Taser on  
14   Mr. Moore? Can you hold it up so the camera catches  
15   that as well and gesture to it?

16          A    Right there.

17          Q    Does Exhibit 22 contain the area where  
18   Mr. Moore was standing when you discharged the Taser  
19   on him the first time?

20          A    Yes.

21          Q    Can you mark with a Number 3 on that exhibit  
22   where he was standing when you discharged the Taser  
23   the first time?

24          A    Right there.

25          Q    Thank you. And then I think you testified

1 earlier that Mr. Moore's body position did change  
2 after he was Tased the first time, correct?

3 A Correct.

4 Q Did it change in terms of the location of  
5 the premises after the first Taser all the way to  
6 when you realized he was having trouble breathing?

7 A Yes.

8 Q Okay. Can you mark in a sequence starting  
9 with the Number 4 through whatever number you need  
10 where his body positions changed? And then we'll go  
11 through each of them.

12 A That's the first deploy. He fell.

13 Q So is Number 4 where he fell too, sir?

14 A Yeah. Approximately that area.

15 Q Okay.

16 A Then he got up on his hands and knees, and I  
17 deployed the second -- or the third one. Or yeah,  
18 the first, second -- second one, and he lunged  
19 forward again from his knees to this point.

20 Q Where Number 5 is?

21 A Where Number 5 is. Then the same thing as  
22 he was trying to get up again and lunged to where  
23 Number 6 is.

24 Q Is Number 6 where he was positioned when you  
25 first observed him having trouble breathing?



1           A     Correct. It might have been a little bit  
2     closer to the building. It's kind of hard to tell  
3     with the building not being there.

4           Q     Absolutely. Thank you for that.

5                     Did you have your lights and sirens  
6     on when you went to the scene?

7           A     I believe I had my lights on.

8           Q     When did you turn them off?

9           A     I believe they were on the whole time.

10          Q     Were these emergency lights?

11          A     Yes. Red and blues. No siren at that time.

12          Q     Did you ever activate your siren?

13          A     I don't believe so.

14          Q     Other than the mumbling that you told us  
15     about, were there any words or sounds that you  
16     recall Mr. Moore making at any point at the scene?

17          A     Just the yelling right at the beginning. It  
18     was just a (witness demonstrating sound) type of  
19     yell.

20          Q     When he first went to the ground after the  
21     use of the Taser, did he have his hands up to  
22     protect himself?

23          A     No.

24          Q     What part of his body struck the ground  
25     first?

1           **A**    I'm wanting to say his -- like right here on  
2    his shoulder.  He went down kind of at like an  
3    angle.

4           **Q**    Did his head strike the ground to your  
5    knowledge?

6           **A**    I don't believe so.

7           **Q**    How are the general orders at the Ferguson  
8    Police Department disseminated to you as a patrol  
9    officer?

10          **A**    Through our computer system.  Our report  
11   writing system has a spot for general orders.

12          **Q**    And were these general orders disseminated  
13   to you in the same fashion between February of 2010  
14   and September of 2011?

15          **A**    Yes.  Just in a different computer system.

16          **Q**    And the Taser warnings and bulletins, and I  
17   know you have been asked about some versions of  
18   these in earlier questioning, but in what way are  
19   the Taser warnings and bulletins disseminated to you  
20   as a certified Taser operator?

21          **A**    You get the -- when you start the class, you  
22   get the first five pages of the manual that has all  
23   the warnings on it.  You sign off on that.  That  
24   gets mailed back to Taser.  And it's just the  
25   original course that you get them until another

1 version comes out. Then you get them again with the  
2 new version.

3 Q So do you get the entirety of the versions  
4 that are released by Taser as a certified operator?

5 A You do not get the whole thing, no. You get  
6 instructed by the instructor. And the instructor is  
7 the one that keeps all the material.

8 Q And if there are bulletins that are separate  
9 and apart from the versions, how are the bulletins  
10 disseminated to you as a Taser certified operator?

11 A You usually you get them in your mailbox.  
12 And they normally post one on the bulletin board.

13 Q So you have a personal mailbox at the  
14 department?

15 A Correct.

16 Q And then the bulletin board, where is that  
17 situated?

18 A In our squad room.

19 Q And was Mr. Brannan the trainer at Ferguson  
20 on the Taser between your start date and September  
21 of 2011?

22 A Yes.

23 Q And did Mr. Brannan disseminate  
24 taser-related materials to you separate and apart  
25 from the ways that you just told us about? When it

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1 came to a new version or a bulletin, did he also  
2 attempt to make you aware of that?

3 A Yes.

4 Q And how did he do that?

5 A Just by making me a copy of the DVD that he  
6 retrieves. With me being an instructor also, we all  
7 received a copy of the DVD and the Taser manual.

8 MR. JOHNSON: I don't think I have any  
9 further questions. Thank you for your time, sir.

10 THE WITNESS: Thank you.

11 MR. FLOYD: I just had a couple redirect  
12 questions. This is really going to be less than a  
13 minute.

14 MR. PLUNKERT: I was going to say, is now an  
15 okay time for him to answer that question that I  
16 wanted him to have the chance to fully answer?

17 MR. JOHNSON: About what? One of my  
18 questions?

19 MR. PLUNKERT: It was when you were talking  
20 about Exhibit 12. I was hoping we would come back  
21 to it, but I didn't want to interrupt your  
22 questioning.

23 MR. JOHNSON: No. That's fine. We can make  
24 sure that's clear.

25 MR. PLUNKERT: I mean, you can question more

1 on it as much as you want. I just want to give the  
2 witness an opportunity.

3 We can go off the record or do this  
4 however you want, but it was -- it was in response.  
5 I think a good search term would be Exhibit 12, and  
6 then when I chime in. And I can try and help you  
7 find it.

8 THE VIDEOGRAPHER: Off the video record at  
9 1:37.

10 (Recess taken.)

11 THE VIDEOGRAPHER: Back on the record at  
12 1:45.

13 MR. PLUNKERT: Could we read back the  
14 questions during the break that we discussed and  
15 just ensure that the witness had an ample  
16 opportunity to answer that?

17 THE COURT REPORTER: "QUESTION: Do you use,  
18 as a certified user and instructor of a Taser X26,  
19 do you use the terms upper and lower probe?

20 "ANSWER: On the Taser form, yes.

21 "QUESTION: And is the Taser form set  
22 forth as part of the report materials in this case?

23 "ANSWER: Correct. Any time a Taser  
24 is deployed or shown in person, that Taser form  
25 is --

1 "QUESTION: Could you refer to your  
2 report and provide me the exhibit number we're on?"

3 MR. PLUNKERT: And my question, I suppose,  
4 is there anything that you had further that you were  
5 to answer about the Taser form in this case as the  
6 question was posed by --

7 THE WITNESS: I don't think so.

8 MR. PLUNKERT: Okay.

9 MR. JOHNSON: Now I have more questions.

10 THE WITNESS: Okay.

11 MR. JOHNSON: Of course.

12 Q (By Mr. Johnson) On this report, the Taser  
13 use report that you were just asked about, I know  
14 that there's -- you said there's a reference to the  
15 probes?

16 A Correct.

17 Q Correct? Which probe of this device struck  
18 which part of Mr. Moore's body?

19 A The upper probe struck, I'm wanting to say  
20 it was mid chest. Mid chest. The lower probe  
21 struck right at the pelvis area. So I don't know  
22 if -- when I pulled the trigger if I flinched. A  
23 lot of times when you're shooting a firearm, you  
24 flinch. I don't know if I flinched and it went up.  
25 I don't know what kind of circumstances it was.

1           Q    Were there any other circumstances or  
2    variables such as the wind or the weather that you  
3    believe affected your aim or the discharge of this  
4    device?

5           A    Other than him moving around, I don't  
6    believe so.

7           Q    I'm asking about atmospheric variables.

8           A    I can't -- I can't think of anything, no.

9           Q    And the sight, you had good sight distance?

10          A    Yes.

11          Q    You could see him?

12          A    Yeah.

13          Q    He wasn't obscured by anything?

14          A    No.

15          Q    Did you ever communicate your aversion to  
16    pepper mace or pepper spray to anybody with the  
17    Ferguson Police Department?

18          A    I have not. We have -- we had the  
19    capability of carrying or not carrying it.

20          Q    Is this -- and I don't know the operations  
21    that well, but is this a situation where you have  
22    the ability to select different force options and  
23    you just consciously chose not to select mace  
24    because you have an aversion to it?

25          A    Correct.

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1           Q    And so when you go out on patrol, is the  
2   different weaponry there for you, the firearm, the  
3   baton, the Taser, and then you pick them up?

4           A    The Taser is kept at the station, but I have  
5   my firearm, I have my baton on my duty belt at all  
6   times.

7           Q    And so you've never communicated to your  
8   superiors or commanders or anybody within the  
9   department this aversion to mace?

10          A    I've told my lieutenant that it affects me  
11   horribly.

12          Q    Who did you tell?

13          A    It was probably Lieutenant Ballard.

14          Q    When?

15          A    Back when I first started.

16          Q    Was there any alternatives explored?  
17   Instead of using mace, you could use some other  
18   alternative use of force?

19          A    No. It's --

20          Q    I know and I appreciate that you worked  
21   overnight. With that in mind, were you still able  
22   to listen to the questions that Mr. Floyd and I have  
23   asked you today?

24          A    Yes, sir.

25          Q    Were you still able to give what you



1 consider to be intelligent responses and responses  
2 based on your knowledge, background, training and  
3 experience?

4 A I believe so.

5 Q And any type of -- and I know this is a  
6 little spur of the moment here, but any type of  
7 changes or amendments that you'd like to make right  
8 now that, you know, given further time to reflect or  
9 given the fact you were on a break you'd like to  
10 change some answer, sir?

11 A I don't believe so.

12 MR. JOHNSON: Okay. I appreciate your time,  
13 and I don't have any further questions. Mr. Floyd  
14 might have a little follow-up.

15 MR. FLOYD: Not much.

16 [EXAMINATION]

17 QUESTIONS BY MR. FLOYD:

18 Q Just going back to Exhibit Number 21, which  
19 was this Taser Training Academy. I'll try to flip  
20 through the pages to make it easy. There was  
21 something on Ferguson Bates stamp 1464. Do you see  
22 that handwriting there on the page talking about  
23 the --

24 A I can see it. I just can't read it.

25 Q Is that your handwriting?

1           **A**    It kind of looks like it, yes.

2           **Q**    Okay. Do you know of anybody else that  
3 would have put those notes on there? Do you want to  
4 look at it closer and tell me if it's your  
5 handwriting?

6                   MR. PLUNKERT: We can go off the record I  
7 think to clarify, unless you would like the witness  
8 to answer.

9           **A**    I don't think that's my handwriting.

10                  MR. DOWD: There's a couple of pages that  
11 are --

12                  MS. SHAFIAIE: I can just clarify. It wasn't  
13 his handwriting.

14                  MR. PLUNKERT: If you would like for us to.

15                  MR. FLOYD: Yeah. Go ahead. Whose  
16 handwriting is it?

17                  MS. SHAFIAIE: It's Detective -- Detective  
18 Ballard.

19           **A**    Detective Ballard.

20           **Q**    (By Mr. Floyd) Okay.

21           **A**    It don't -- I was going to say it don't look  
22 like mine. It's close but it's not.

23           **Q**    One more though. Flip through there. I  
24 think it's one that has the big clip on the top.  
25 One more. Yeah. I think that's the one. I think

1 that's okay. Now, these are -- the bottom of that  
2 page it talks about the needle sizes. And as I  
3 understand them, the three types, there was a  
4 quarter inch needle that was a training needle?

5 A Correct.

6 Q And then one that's four-tenths of an inch,  
7 just short of a half inch, and one that's .55 inches  
8 on the needle. Can you tell me which type needle  
9 was used on the X26 that was used on Mr. Moore?

10 A I'm trying to remember what color of doors  
11 go with the size needle. I'm wanting to say it was  
12 the .4, the .40.

13 Q Is there any way that we can determine which  
14 one, if that gun is still in evidence?

15 A If that gun is still in evidence and it has  
16 the blast doors with it, I'd be able to tell you,  
17 yes.

18 Q At a minimum it would be .4-inch which is  
19 just under a half inch. And then at a maximum it  
20 would be .55 inches?

21 A Correct.

22 MR. JOHNSON: She has the Taser in her  
23 office. Can we go off the record while you grab  
24 that and we can look at the Taser door?

25 MR. FLOYD: Go off the record.

1 THE VIDEOGRAPHER: Off the record at 1:52.

2 (Recess taken.)

3 THE VIDEOGRAPHER: Back on the record at  
4 1:53.

5 [EXAMINATION]

6 QUESTIONS BY MR. PLUNKERT:

7 Q Officer, do you remember in response to  
8 Todd's questions earlier regarding whether you had  
9 been disciplined regarding this incident? Was that  
10 a yes? Do you remember that testimony?

11 A Yes, I remember that testimony.

12 Q And to your knowledge have you?

13 A I don't believe I was disciplined.

14 Q You mentioned you had time off after this  
15 incident, right?

16 A Correct.

17 Q Do you attribute that to discipline?

18 A No. I contribute that to department  
19 policies.

20 Q Okay. And lastly on clarification, you've  
21 spoken about the aversion that you have to spray,  
22 right?

23 A Correct.

24 Q Can you describe the aversion and how long  
25 that aversion lasts?

1           **A**   My eyes swell to where they're completely  
2   swollen shut. It normally takes 12 to 13 hours for  
3   them to go down.

4           MR. PLUNKERT: Those are the clarification  
5   questions that we have.

6           MR. DOWD: Let's go off the record.

7           THE VIDEOGRAPHER: Off the record at 1:54.

8                               (Recess taken.)

9           THE VIDEOGRAPHER: Back on the record at  
10   1:55.

11                               [EXAMINATION]

12   QUESTIONS BY MR. FLOYD:

13           **Q**   Just so that we're clear to answer the  
14   question as to the needle length on the Taser that  
15   was in question in this case, you were actually able  
16   to look at the Taser and verify that it was the  
17   .4-inch needle; is that correct?

18           **A**   Correct.

19           **Q**   And you were also asked a question about  
20   your dislike of pepper spray. There was some  
21   indication that you had 12 or 13 hours' worth of  
22   symptoms to dissipate; is that correct?

23           **A**   Correct.

24           **Q**   I just want to make sure that I'm clear on  
25   something though. That as I understand it, and

1 correct me if I'm wrong, pepper spray or mace is  
2 intended to cause a rapid inflammatory process in  
3 the mucous membranes, the eyes, even the breathing  
4 so as to incapacitate someone who is hostile or  
5 being dangerous, correct?

6 A Correct.

7 Q And did you happen to time this or is this  
8 just an estimate that you had these symptoms for 12  
9 hours?

10 A It was approximately, an estimate.

11 Q And this was how many years ago?

12 A Back in probably 2005.

13 Q Okay. So about ten years ago. And you were  
14 sprayed with the pepper spray one time, correct?

15 A It was the fog, yes.

16 MR. FLOYD: Okay. All right. I think those  
17 are all the questions I have. Thank you.

18 MR. PLUNKERT: We can -- we'll read.

19 I'll send you the testimony. You can  
20 check it over, ensure that it's been accurately  
21 transcribed, and we can return it. Okay?

22 THE WITNESS: Okay.

23 THE VIDEOGRAPHER: We're off the record at  
24 1:56.

25

1 State of Missouri

2 SS.

3 County of St. Louis

4 I, Tracey Aurelio, duly commissioned, qualified  
5 and authorized to administer oaths and to certify to  
6 depositions, do hereby certify that pursuant to  
7 Notice in the civil cause now pending and  
8 undetermined in the United States District Court,  
9 Eastern District of Missouri, Eastern Division, to  
10 be used in the trial of said cause in said court, I  
11 was attended at the offices of Pitzer Snodgrass,  
12 100 South Fourth Street, 4th Floor, St. Louis,  
13 Missouri, 63102, by the aforesaid attorneys; on the  
14 22nd day of September, 2015.

15 The said witness, being of sound mind and being  
16 by me first carefully examined and duly cautioned  
17 and sworn to testify the truth, the whole truth, and  
18 nothing but the truth in the case aforesaid,  
19 thereupon testified as is shown in the foregoing  
20 transcript, said testimony being by me reported in  
21 shorthand and caused to be transcribed into  
22 typewriting, and that the foregoing pages correctly  
23 set forth the testimony of the aforementioned  
24 witness, together with the questions propounded by  
25 counsel and remarks and objections of counsel

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1 thereto, and is in all respects a full, true,  
2 correct and complete transcript of the questions  
3 propounded to and the answers given by said witness;  
4 that signature of the deponent was not waived by  
5 agreement of counsel.

6 I further certify that I am not of counsel or  
7 attorney for either of the parties to said suit, not  
8 related to nor interested in any of the parties or  
9 their attorneys.

10

11 Dated this 22nd of September, 2015.

12

13

14

Tracey Aurelio  
Tracey Aurelio, CCR, CSR, RDR, C

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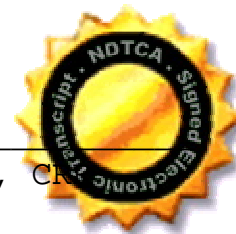
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1 GorePerry Reporting & Video

2 Tuesday, September 29, 2015

3

Mr. Robert T. Plunkert, Esq.

4 Pitzer Snodgrass

100 South Fourth Street Suite 400

5 St. Louis, MO, 63102

6 Re: Deposition of Brian Kaminski

Date: Tuesday, September 22, 2015

7 Case: Tina Moore, et al. vs.

Brian Kaminski, et al.

8

9 Mr. Robert T. Plunkert, Esq.

10 Your witness did not waive the right to read and sign  
his/her deposition in the above referenced matter.

11 Enclosed is the copy of the deposition you ordered,  
together with errata sheets and additional signature  
12 page. Please instruct your witness to read the  
transcript, list any corrections (including page and  
13 line number) on the errata sheets, sign and date the  
errata sheets and signature page.

14

Within 30 days, please return the errata sheets and  
15 signature page to our office for further processing.

16 Your prompt cooperation will be appreciated.

17

18

19

20

21 Sincerely,

22

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1 Comes now the witness, Brian Kaminski,  
2 and having read the foregoing transcript  
3 of the deposition taken on 9/22/2015,  
4 acknowledges by signature hereto that it is a  
5 true and accurate transcript of the testimony given  
6 on the date hereinabove mentioned.

7

8

9

10 \_\_\_\_\_  
Brian Kaminski

11

12 Subscribed and sworn to me before this  
13 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

14 My Commission expires

15

16

17

18 \_\_\_\_\_  
Notary Public

19

20

21

22

23

24

25

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1 COURT MEMO

2

3

4

5 Tina Moore, et al. vs. Brian Kaminski, et al.

6

7

8 CERTIFICATE OF OFFICER AND

9 STATEMENT OF DEPOSITION CHARGES

10

11 DEPOSITION OF Brian Kaminski

12

13 9/22/2015

14 Name and address of person or firm having custody of  
15 the original transcript:

16

17 Dowd & Dowd

18 211 North Broadway, Suite 4050

19 St. Louis, MO 63101

20

21

22

23

24

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1 Upon delivery of transcripts, the above  
2 charges had not been paid. It is anticipated  
3 that all charges will be paid in the normal course  
4 of business.

5 GORE PERRY GATEWAY & LIPA REPORTING COMPANY  
6 515 Olive Street, Suite 700  
7 St. Louis, Missouri 63101

8 IN WITNESS WHEREOF, I have hereunto set

9 STATEMENT OF DEPOSITION CHARGES

10 my hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_

11 Commission expires

12 \_\_\_\_\_

13 Notary Public

14

15

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